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8, 1950

11.

No. 20 1948

UNIVERSITY OF LONDON
W.C.T.
28 MAR 1951
INSTITUTE OF ADVANCED
DISTRICT COURT, KANDY
No. 45415

Supreme Court of Ceylon
No. 289 of 1943 (Final)

IN THE PRIVY COUNCIL
ON AN APPEAL FROM THE SUPREME
COURT OF CEYLON

BETWEEN

- 1. PIYARATANA UNNANSE, and
- 2. AMUNUGAMA RATANAPALA THERO

Versus

- 1. WAHAREKE SONUTTARA UNNANSE (deceased)
- 2. WAHAREKE GUNARATANA UNNANSE
- 3. AKWATTE DEWAMITTA UNNANSE
- 4. MADUGALLE SEELAWANSA UNNANSE

And

- 5. WAHAREKE SOBITHA UNNANSE, and
- 6. WAHAREKE RATANAPALA UNNANSE substituted-Defendants
in place of the 1st Defendant (deceased)

UNIVERSITY OF LONDON
W.C.T.
15 JUL 1953
INSTITUTE OF ADVANCED
LEGAL STUDIES

Defendants-Respondents.

Defendants-Respondents.

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UNIVERSITY OF LONDON

15 JUL 1953

INSTITUTE OF ADVANCED
LEGAL STUDIES

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INSTITUTE OF ADVANCED
LEGAL STUDIES,
25, RUSSELL SQUARE,
LONDON,
W.C.1.

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PART I.

No. 1.

Journal Entries.

No. 1.
Journal
Entries
4-7-34
to
30-8-43.

IN THE DISTRICT COURT OF KANDY.

No. 45415.

- 1. PIYARATANA UNNANSE, and
- 2. AMUNUGAMA RATANAPALA THERO, both of the
Degaldoruwa Vihare in Lower Dumbara.....*Plaintiffs.*

vs.

- 10 1. WAHAREKE SONUTTARA UNNANSE,
- 2. WAHAREKE GUNARATANA UNNANSE,
- 3. AKWATTE DEWAMITTA UNNANSE, and
- 4. MADUGALLE SEELAWANSA UNNANSE, all of Malwatte
Vihare in Kandy.....*Defendants.*

Journal.

(1) The 4th day of July, 1934.

Mr. M. A. Vanderwall files appointment and plaint. Plaint accepted and summons ordered for 24/8/34.

Intd. R. F. D.,
D. J.

20

13-8-34.

(2) S. S. Issued.

24-8-34.

(3) Summons served on 3rd Defendant. Not served on 1st, 2nd and 4th. Reissue for 24/9.

Mr. Coomaraswamy for 3rd Defendant.

Proxy and answer for 24/9.

Intd. R. F. D.,
D. J.

No. 1.
Journal
Entries
4-7-34
to
30-8-43—*Conti-
nued.*

5-9-34.

(4) S. S. Reissued.

24-9-34.

(5) Proxy and answer of 3rd Defendant. Summons served on 4th Defendant. Not served on 1st and 2nd Defendants. Mr. Coomaraswamy for 3rd and 4th Defendants. Proxy and answer and reissued 23/10.

Intd. R. F. D.,
D. J.

28-9-34.

(6) S. S. Reissued.

10

23-10-34.

(7) Summons served on 1st and 2nd Defendants. Answer of 3rd and 4th Defendants due. Proxy of 3rd and 4th Defendants filed by Mr. Guruswamy. Proxy and answer for 1st and 2nd. (Mr. Ratnayake for 21/11.)

Intd. W. E. B.,
D. J.

21-11-34.

(8) Proxy and answer of 1st and 2nd Defendants due. Proxy filed. Answer finally 28/11. Answer of 3rd and 4th Defendants due. Same date.

20

Intd. W. E. B.,
D. J.

28-11-34.

(9) Answer of 1st and 2nd Defendants due. Filed. (A claim in reconvention). Answer of 3rd and 4th Defendants due. Filed. Trial 16/5/38.

Intd. W. E. B.,
D. J.

16-5-35.

(10) *Vide* proceedings. Refix trial for the 12th November, 1935.

Intd. W. E. B.,
D. J. 30

25-10-35.

(11) As a large number of old deeds and documents have to be obtained for the trial of this case Mr. L. B. Ratnayake for 1st and 2nd Defendants moves that the trial of this case be postponed to a later date from 12/11/35. Refused.

Intd. R. F. D.,
D. J.

28-10-35.

(12) Mr. Guruswamy takes out one subpoena.

9-11-35.

(13) Mr. Vanderwall takes out one subpoena.

12-11-35.

(14) *Vide* proceedings. The further hearing is adjourned for 3/12/35.

3-12-35.

(15) *Vide* proceedings. Documents to be put in on the 10th December. I will then study them and fix case for argument.

10

Intd. R. F. D.,
D. J.

10-12-25.

(16) Defendant's documents D₁ to D₁₅ put in. Plaintiff's documents finally on the 17th December, 1935.

Intd. R. F. D.,
D. J.

17-12-35.

(17) Plaintiffs' documents put in. Call 7/1/36 to fix date for addresses. In the meanwhile I will study the documents.

20

Intd. R. F. D.,
D. J.

7-1-36.

(18) Documents studied. Fix case for addresses on the 10/1/36.

Intd. R. F. D.,
D. J.

10-1-36.

(19) *Vide* proceedings. Counsel address the Court. Judgment 10/2/36.

Intd. R. F. D.,
D. J.

30 10-2-36.

(20) *Vide* Judgment. The Plaintiffs' action is dismissed with costs.

Intd. R. F. D.,
D. J.

No. 1.
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Entries
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to
30-8-43—*Continued.*

No. 1.
Journal
Entries
4-7-34
to
30-8-43—Conti-
nued.

22-2-36.

(21) Mr. M. A. Vanderwall for Plaintiffs, files Petition of Appeal and supplies the following stamps:—

S. C. Judgment	...	...	...	...	Rs. 5
Certificate in Appeal	...	...	...	...	„ 6
					<u>Rs. 21</u>

(22) *Eodie*.—Application for typewritten copies filed.

Intd. R. F. D.,
D. J.

6-3-36.

10

(23) Mr. M. A. Vanderwall for Plaintiffs moves that notice of appeal and security for costs may be dispensed with. Messrs. L. B. Ratnayake and V. M. Guruswamy for 1st and 2nd Defendants and 3rd and 4th Defendants respectively consenting. Allowed.

Intd. R. F. D.,
D. J.

21-3-36.

(24) Application for typewritten copies filed. Appeal register signed.

Intd. R. F. D.,
D. J. 20

7-7-37.

(25) Record received from S. C.

The Decree of this Court dated 10th February, 1936, is set aside and the case is sent back for trial on the issues 9th, 10th and 11th.

It is further ordered that it be open to the parties if they so desire to raise the question whether the Defendants are on law entitled to claim compensation and any issue necessary for that purpose may also be raised at the trial.

Call 22/7/37.

Intd. R. F. D.,
D. J. 30

22-2-37.

(26) Issues 30/8,

Intd. R. F. D.,
D. J.

30-8-37.

(27) *Vide* proceedings. Of consent issue commission at joint expenses to Mr. Spaar. Defendant to issue commission. Take off T/R and call for receipts on 21/9/37.

No. 1.
Journal
Entries
4-7-34
to
30-8-43—*Continued.*

Intd. R. F. D.,
D. J.

21-9-37.

(28) Receipts due. Plaintiff's receipt filed. Last date 5/10.

Intd. R. F. D.,
D. J.

10

5-10-37.

(29) Defendant's receipt due. Filed.
Issue commission 16/11.

Intd. R. F. D.,
D. J.

22-10-37.

(30) Commission issued.

16-11-37.

(31) Return to commission due. Report filed.
20 Call case 23/11.

Intd. R. F. D.,
D. J.

23-11-37.

(32) Plan required. Parties agree that the plan be made by Mr. Spencer at joint expense. Commission to be in terms of report. Receipt and commission on 14-12.

Intd. R. F. D.,
D. J.

14-12-37.

30 (33) Receipts and commission due. Filed. Commission returnable 1/2.

Intd. R. F. D.,
D. J.

17-12-37.

(34) Public Trustee requests that D. C. Kandy 45415 be forwarded to him for reference and return in a fortnight.

Send to be returned in a fortnight. Open sub-file.

Intd. R. F. D.,
D. J.

No. 1.
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4-7-34
to
30-8-43—Conti-
nued.

21-1-38.

(35) Commission issued.

1-2-38.

(36) Plan due—*Vide* return dated 31/1/38. Commissioner asks for an extension of time. Commission extended and reissued. Returnable 1/3/38.

Intd. M. T. de S. A.,
D. J.

1-3-38.

(37) Plan due. *Vide* letter 1/3/38. Commissioner asks for a further extension of the commission returnable date. 10

Finally 12/4.

Intd. R. F. D.,
D. J.

1-3-38.

(38) Commission extended and returned.

12-4-38.

(39) Plan due. The Commissioner, Mr. P. Spencer, reports that he was obstructed by Rev. B. Devamitta. He also reports that his fees for measuring Meda Pansala and supplying a ground plan and elevation as required by Mr. Spaar has not been paid yet. 20

Notice—for 7/6.

Intd. R. F. D.,
D. J.

21-4-38.

(40) Notice issued.

6-5-38.

(41) The Defendants having paid Plaintiffs Rs. 150/- towards the Plaintiffs taxed bill of costs Messrs. L. B. Ratnayake and V. M. Guruswamy for 1st and 2nd Defendants and 3rd and 4th Defendants respectively move that the Court be pleased to allow the Defendants a further period of two 30 months to pay the balance due and that writ may not be issued in the meantime. No power. Refused.

Intd. R. F. D.,
D. J.

7-6-38.

(42) Notice served on Rev. B. Dewamitta. Mr. A. Fernando files Proxy.
Vide proceedings—Plaintiff to reissue, Commission returnable 19/7.

Intd. R. F. D.,
 D. J.

No. 1
 Journal
 Entries
 4-7-34
 to
 30-8-43—*Conti-
 nued.*

23-6-38.

(43) Commission reissued.

19-7-38.

(44) Plan filed. Reissued commission returnable 30/8.

10

Intd. R. F. D.,
 D. J.

10-8-38.

(45) Commission issued.

30-8-38.

(46) Return to commission due. Commissioner asks for two weeks
 further time owing to his recent indisposition.

Allowed for 13/9/38 finally.

Intd. R. F. D.,
 D. J.

20 13-9-38.

(47) Return to commission due finally. Invite attention and call 27/9.

Intd. R. F. D.,
 D. J.

15-9-38.

(48) *Vide* Commissioner's report mention 27/9.

Intd. R. F. D.,
 D. J.

27-9-38.

(49) Commissioner's report filed. Call case 11/10.

30

Intd. R. F. D.,
 D. J.

11-10-38.

(50) Fix trial on issues relating to compensation on 16/1/39.

Intd. G. C. T.,
 D. J.

No. 1.
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Entries
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to
30-8-43—*Continued.*

6-1-39.

(51) Mr. Guruswamy files list and takes out one subpoena.

10-1-39.

(52) Mr. Vanderwall files list and takes out one subpoena.

13-1-39.

(53) Mr. Vanderwall for Plaintiffs files additional list of witnesses.

16-1-39.

(54) D. C. K. Cr. 53 proceeding. Refix trial for 22/3/39 (Colombo Counsel—Mr. Gratiaen appearing).

Intd. G. C. T., 10
D. J.

7-3-39.

(55) As the 3rd Defendant who is the trustee of Medili Vihare in Kegalle District has to be away at Kegalle for three weeks next month, Mr. Guruswamy for 3rd Defendant moves that the trial of this case fixed for 22nd March be postponed to some other date. Refused.

Intd. M. W. H. de S.,
D. J.

13-3-39.

(56) Mr. Guruswamy takes out one subpoena.

20

16-3-39.

(57) As Mr. L. A. Rajapakse, who appears for the Defendants in this case, is held up with heavy Appeal Court work on the 22nd instant and it is not possible to get those cases postponed, Mr. V. M. Guruswamy for 3rd and 4th Defendants moves that the Court be pleased to refix the trial of this case.

Mr. A. E. H. Perera with Mr. Vanderwall for Plaintiffs objects. Trial date to stand.

Intd. M. W. H. de Silva,
D. J.

16-3-39.

(58) Mr. Vanderwall takes out one subpoena.

30

21-3-39.

(59) Mr. Guruswamy for Defendants files additional list of witnesses.

22-3-39.

(60) *Vide* proceedings. It is agreed that the Court will have to define what the Meda Pansala is and an issue will have to be framed.

I have a heavy part-heard criminal case, which will take the rest of the day. Trial is postponed for 2/6/39. (Colombo Counsel).

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nued.

Intd. M. W. H. de S.,
D. J.

31-5-39.

(61) Mr. Guruswamy for Defendants files additional list of witnesses.

10 2-6-39.

(62) *Vide* proceedings. The further hearing is adjourned for the 26/6/39.

Intd. G. C. T.,
D. J.

12-6-39.

(63) Mr. Spencer, surveyor, inserts extents as per order of Court.

19-6-39.

(64) Proctors for parties are informed that the trial fixed for 26/6 will be postponed as there will be a heavy part-heard case on that date. Call 26/6 to fix date of trial.

20

Intd. G. C. T.,
D. J.

26-6-39.

(65) T 50 a heavy trial is fixed for to-day and to-morrow. Refix trial for 26/9/39 (part heard).

Intd. G. C. T.,
D. J.

19-9-39.

(66) As the 3rd and 4th Defendants are unable to find sufficient funds to get ready for trial on the 26th instant and as this case has already been partly heard by Mr. G. C. Thambyah, Mr. V. M. Guruswamy for 3rd and 4th Defendants moves that the trial of this case be postponed to some other date.

Trial refixed for 1/2/40.

Intd. J. J.,
D. J.

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nued.

1-2-40.

(67) Defendants' Counsel is ill. Of consent the trial is postponed on payment to Plaintiff or Plaintiffs' Proctor the sum of Rs. 150/- as costs of to-day. This sum, of consent, is to be paid on or before 21st May, 1940. Trial is refixed for 28/5/40. Of consent if Rs. 150/- is not paid by 21/5/40, the claim to compensation to stand withdrawn.

Intd. W. S.,
D. J.

9-5-40.

(68) Mr. Guruswamy for 3rd and 4th Defendants move to deposit in 10 Court for the benefit of the Plaintiffs the sum of Rs. 150/- in terms of the order of Court dated 1/2/40.

Further moves that a deposit slip be issued to him to enable him to deposit the said sum of Rs. 150/-.

Why not pay to Plaintiff or his Proctor as required by the order of Court ?

Intd. W. S.,
D. J.

15-5-40.

(69) Mr. Vanderwall for Plaintiffs move to certify payment of a sum of Rs. 150/- recovered to-day from the Proctor for 3rd and 4th Defendants. 20

Certify payment.

Intd. W. S.,
D. J.

15-5-40.

(70) Mr. Guruswamy for 3rd and 4th Defendants move that the trial fixed for 28th instant be postponed for another date as the Defendants have to participate in a series of ordinations.

For the present the application is refused.

Trial on due date, if the case can be concluded.

Intd. W. S., 30
D. J.

22-5-40.

(71) Mr. Vanderwall for Plaintiffs files additional list of documents.

25-5-40.

(72) Mr. Vanderwall for Plaintiffs files additional list of witnesses.

27-5-40.

(73) Mr. Vanderwall files list and takes out one subpoena.

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30-8-43—*Conti-
nued.*

28-5-40.

(74) *Vide* proceedings. Parties agree that Defendants would give up possession of lot 2 to Plaintiff if he tenders security to the value of Rs. 3,000/- to the satisfaction of Court.

Trial specially fixed for 4th and 5th July, 1940.

20-6-40.

Intd. G. C. T.,
D. J.

10 (75) Mr. Vanderwall takes out one subpoena.

3-7-40.

(76) Call. *Vide* proceedings call on 8/7 to fix another date suitable to Colombo Counsel.

Intd. G. C. T.,
D. J.

4-7-40.

(77) Mr. Vanderwall for Plaintiffs files additional list of documents.

8-7-40.

(78) To fix date for trial. Trial fixed for 28th and 29th of August.
20 Proctors take notice.

Intd. G. C. T.,
D. J.

21-8-40.

(79) Mr. Vanderwall for Plaintiffs files additional list of witnesses.

28-8-40.

(80) *Vide* proceedings. Further hearing 29/8/40.

Intd. G. C. T.,
D. J.

29-8-40.

30 (81) *Vide* proceedings. Mr. Spaar directed to carry out the directions given by the Court. Proctors for 1st, 2nd, 3rd and 4th Defendants will pay him the necessary fees and file in Court his receipts on 6/9.

Return to commission on 19/9.

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Entries
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30-8-43—*Continued.*

The cross-examination of Mr. Spaar will be continued after he has furnished the Court with the necessary report. Further hearing 16th and 23rd September.

Intd. G. C. T.,
D. J.

6-9-40.

(82) Receipt 10/9.

Intd. G. C. T.,
D. J.

10-9-40.

(83) Receipt due. Filed.

Intd. G. C. T.,
D. J.

10

16-9-40.

(84) *Vide* proceedings.

Mr. Obeyesekera states that he has no further evidence to call in the case except the evidence of Mr. Spaar.

I shall inspect the premises on Tuesday, the 1st October, at 9 a.m. in the presence of the parties with their Counsel and Proctors. Call case on 30/9 to arrange for the inspection the next morning.

20

Intd. G. C. T.,
D. J.

19-9-40.

(85) Return to commission due. Not filed. Call 23/9.

Intd. G. C. T.,
D. J.

23-9-40.

(86) Plan with valuation report filed.

30-9-40.

(87) Further hearing of this case, which is fixed for the 1/10, is postponed 30 for the 19th of October at 11 a.m.

Let all the Proctors be informed and they be requested to communicate with their Counsel as regards the altered date.

Intd. G. C. T.,
D. J.

19-10-40.

(88) *Vide* proceedings. Further hearing for 9/11. If, however, this date does not suit Counsel for the Plaintiffs who, I understand, is engaged on that day before another Court, the further hearing will be had on 16/11.

No. 1.
Journal
Entries
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to
30-8-43—*Conti-
nued.*

Intd. G. C. T.,
D. J.

31-10-40.

(89) Mr. Vanderwall takes out one subpoena.

9-11-40.

10 (90) *Vide* proceedings. I would like to inspect these premises. There will be no time to do so to-day. I shall inspect these premises on 30/11.

Intd. G. C. T.,
D. J.

26-11-40.

(91) *Vide* letter from Mr. G. C. Thambyah. Proctors informed.

30-11-40.

(92) *Vide* proceedings. Call 9/12 to fix a date for inspection.

Intd. G. C. T.,
D. J.

20 9-12-40.

(93) Inspection 14/12. Proctors informed on 30/11/40.

Intd. G. C. T.,
D. J.

12-12-40.

(94) *Vide* Petition. W. Sri Bodhiseila Sumana Nayake Thero begs to bring to the notice and consideration that when making a survey plan, the Plaintiff in this case wrongfully pointed out a portion of the Pansala of Malwatte Vihare belonging jointly to him and D. Sri B. Siddhartha Thero and therefore begs to direct this to be filed of record in this case for future
30 reference.

File.

Intd. W. S.,
D. J.

14-12-40.

(95) *Vide* proceedings. As regards the further date to be fixed for the inspection, I propose to read through the evidence, and if I find that an

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inspection would be helpful in arriving at a decision or of understanding the evidence better I shall fix a further date with notice to the Proctors.

Intd. G. C. T.,
D. J.

16-12-40.

(96) Document marked X filed.

6-2-41.

(97) *Vide* proceedings. Judgment for Plaintiff.

Intd. W. S.,
D. J. 10

7-2-41.

(98) Mr. Guruswamy for 3rd and 4th Defendatnts file Petition with K.R. for Rs. 24/- for 2 sets of typewritten copies and the following stamps :—

S. C. Judgment	...	...	...	...	Rs. 12-00
Certificate	...	...	...	...	„ 6-00

File.

Intd. W. S.,
D. J.

10-2-41.

(99) Mr. L. B. Ratnayake for 1st and 2nd Defendants-Appellanrs file 20 Petition of Appeal with the following stamps :—

S. C. Judgment	...	...	...	...	Rs. 12-00
Certificate	...	...	...	...	„ 6-00

File.

Intd. W. S.,
D. J.

11-2-41.

(100) Mr. Vanderwall for Plaintiff prays that the Defendants may be ejected or that the 1st Plaintiff be put and placed in possession of the Meda Pansala. Comprises of lots 1, 2, 4 and 5 as per plan filed of record. Application 30 refused may be renewed.

18-2-41.

(101) Mr. Guruswamy for 3rd and 4th Defendants move that security for the Plaintiffs' cost of appeal and notice of appeal be dispensed with.

Allowed.

Intd. W. S.,
D. J.

18-2-41.

(102) Mr. Ratnayake for 1st and 2nd Defendants-Appellants files K. R. Receipts Nos. 99033 for Rs. 12/- and 99035 for Rs. 12/-.

File.

Intd. W. S.,
D. J.

No. 1.
Journal
Entries
4-7-34
to
30-8-43—Conti-
nued.

18-2-41.

(103) Mr. Guruswamy for 3rd and 4th Defendants moves that security for 1st and 2nd Defendants' costs of appeal and notice of appeal be dispensed
10 with.

Allowed.

Intd. W. S.,
D. J.

18-2-41.

(104) Mr. Ratnayake for 1st and 2nd Defendants-Appellants moves that security for Plaintiffs' costs and notice of appeal be dispensed with.

Allowed.

Intd. W. S.,
D. J.

20 18-2-41.

(105) Mr. Ratnayake for 1st and 2nd Defendants-Appellants moves that security for costs of 3rd and 4th Defendants' costs and notice of appeal be dispensed with.

Allowed.

Intd. W. S.,
D. J.

27-2-41.

(106) Mr. L. B. Ratnayake for 1st and 2nd Defendants states as the 3rd and 4th Defendants-Appellants are also Appellants in this case and are furnished
30 with a typewritten copy of this case of consent and move that the issue of a typewritten copy by him to them be dispensed with.

Allowed.

Intd. W. S.,
D. J.

27-2-41.

(107) Mr. Guruswamy for 3rd and 4th Defendants moves that issue of typewritten copies to the 1st and 2nd Defendants-Respondents be dispensed with in this case.

Allowed.

Intd. W. S.,
D. J.

40

No. 1.
Journal
Entries
4-7-34
to
30-8-43—*Conti-
nued.*

4-3-41.

(108) Mr. Vanderwall for Plaintiffs-Petitioners in terms of the Order made on 11/2/41 submits a Petition and affidavit and moves for a fresh application for a writ to have the Plaintiffs-Petitioners put in possession of the premises decreed to them and further moves for an order directing the Defendants-Respondents to show cause, if any, why the Plaintiffs-Petitioners should not without giving security for the restitution of any property taken in execution of the Decree entered by this Court on 6/2/41 and for the due performance of the Decree or order that may be made by the Supreme Court on the appeals preferred by the Defendants be permitted to execute the 10 Decree dated 6/2/31.

Inquiry 7/4.

Intd. W. S.,
D. J.

10-3-41.

(109) Mr. M. A. Vanderwall for Plaintiffs-Petitioners moves that the Court may be pleased to advance the hearing of this enquiry into Plaintiffs-Petitioners' application for a writ of possession.

Inquiry on 7/4.

Intd. T.F.C.R., 20
D. J.

7-4-41.

(110) Mr. Guruswamy for 3rd and 4th Respondents files affidavit from 1st, 2nd, 3rd and 4th Defendants-Respondents and moves to stay the writs of possession applied for by the Plaintiffs.

7-4-41.

(111) *Vide* proceedings. Application allowed. Order to-morrow.

D. J.

7-4-41.

(112) Writ of possession issued.

Intd. W. S., 30
D. J.

7-4-41.

(113) Fiscal reports that he could not deliver possession as the doors of the rooms were locked.

8-4-41.

(114) Mr. Vanderwall for Plaintiffs states as the Fiscal is unable to effect delivery of possession as the Defendants having barred and shut the doors and moves to authorize the Fiscal, C. P., to break open the said doors.

Allowed at Plaintiffs' risk.

Intd. 40
D. J.

8-4-41.

(115) *Vide* order. In the circumstances, I allow execution to issue and that the Plaintiffs be placed in possession.

No. 1.
Journal
Entries
4-7-34
to

D. J. 30-8-43—Conti-
nued.

8-4-41.

(116) Writ of possession reissued.

Intd. A. S. G.

25-4-41.

(117) Fiscal reports delivery of possession.

Intd. A. S. G.

10

23-5-41.

(118) Mr. Vanderwall for Plaintiffs moves that Mr. Kreltshheim be allowed to make a copy of the plan marked 20A made by Mr. Spencer.

Allowed.

Intd. W. S.,
D. J.

24-6-41.

(119) Deficiency for appeal briefs called for.

20	Mr. Guruswamy	...	...	...	...	Rs. 108/-
	„ L. B. Ratnayake	...	...	...	...	„ 108/-

Intd. E. J. de Z.

14-7-41.

(120) Deficiency supplied.

K. R. 06263/861 for Rs. 108/-

K. R. 06228/826 for Rs. 108/-

Intd. E. J. de Z.

4-8-41.

(121) Reqn. No. 528 issued as per particulars :—

30	Rs. 132.00	in favour of Mr. A. S. Goonewardena for copying briefs.
	„ 39.60	in favour of Mr. E. J. de Zilva for comparing.
	„ 92.40	to be credited to revenue.

Rs. 264.00

Intd. T. F. C. R.,
D. J.

...-8-41.

(122) Appeal briefs handed to,

(1) Mr. L. B. Ratnayake for 1st and 2nd Defendants-Appellants.

No. 1.
Journal
Entries
4-7-34
to
30-8-43—Conti-
nued.

- (2) Mr. V. M. Guruswamy for 3rd and 4th Defendants-Appellants.
(3) Mr. M. A. Vanderwall Plaintiffs-Respondents.
- Intd. E. J. de Z.
- 6-8-41.
(123) Appeal Register signed.
Intd. C. N.,
D. J.
- 8-8-41.
(124) Record forwarded to the Registrar, S.C., Colombo, with two sets of appeal briefs and file of documents. 10
Intd. T. H. de S.
- 8-10-42.
(125) Registrar, S.C., returns record.
Appeal rejected on a preliminary objection.
Intd. C. N.,
D. J.
- 19-1-43.
(126) Mr. M. A. Vanderwall for Plaintiff-Petitioner files petition and affidavit and moves that the Decree be amended.
Inquiry 12/3. 20
Intd. C. N.,
D. J.
- 12-3-43.
(127) Inquiry.
Vide proceedings—order reserved.
D. J.
- (128) *Vide* proceedings. Decree dated 6/2/41 be amended.
D. J.
- 1-4-43.
(129) Copy decree issued on Rs. 15'00.
Intd. R. B. R. 30
- 2-4-43.
(130) Mr. M. A. Vanderwall for Plaintiffs pray for a Writ of Possession to put the Plaintiffs in the possession of the land shown in the inset edged green in Plan marked 20 (a) dated 16/7/38 and to eject the Defendants from the said land.
Allowed.
Intd. C. N.,
D. J.

2-4-43.

(131) Defcy : of Rs. 163/80 by Defendants tendered.

No. 1.
Journal
Entries
4-7-34
to
30-8-43--*Conti-
nued.*

2-4-43.

(132) Mr. L. B. Ratnayake for 1st and 2nd Defendants-Appellants file Petition of Appeal with K. R. No. 31528/146 for Rs. 40/- and K. R. No. 31701/219 for Rs. 10/- for 2 sets of appeal briefs and supplied the following stamps:

S. C. Judgment	...	...	...	...	Rs	30 00
Certificate	...	...	...	...	,,	15 00

Further move to dispense with security for costs and notice of appeal.
10 Also move to dispense with typewritten copies for the use of 3rd and 4th Respondnets.

1. File
2. Allowed.

Intd. C. N.,
D. J.

3-4-43.

(133) W. P. Issued. (*Vide* 102).

Intd. A. S. G.

3-4-43.

20 (134) Mr. L. B. Ratnayake for 1st and 2nd Defendants-Appellants states as they have filed Petition of Appeal in this case, move :

- (a) that the application for writ of possession by the Plaintiff-Respondents be disallowed pending decision in appeal, or
- (b) that the Plaintiff-Respondents be ordered to give security in terms of Section 763 of the C. P. C.

In Court.

Intd. C. N.

6-4-43.

30 (135) Call, *Vide*
Application has been made after the order allowing execution.

No petition has been filed and the execution creditor has not been made a party respondent.

This application is therefore refused.

Intd. C. N.,
D. J.

No. 1.
Journal
Entries
4-7-34
to
30-8-43—*Conti-
nued.*

3-5-43.

(136) Deficiency of Rs 160/80 by Plaintiffs tendered.

Intd. K. M. K.

3/5/43.

25-8-43.

(137) Fees due for appeal briefs	...	...	...	Rs. 300 00
Amount deposit	...	...	..	50 00
				Rs 250 00
	Balance	...		Rs 250 00

Request Appellant's Proctor to deposit the balance.

Intd. C. N., 10

D. J.

30-8-43.

(138) Balance fees for appeal briefs Rs. 250/- deposited; *Vide* K.R. No. X/4 027757/1712 of 30/8/43.

Intd. K. M. K.

No. 2

Plaint of the Plaintiffs.

IN THE DISTRICT COURT OF KANDY.

1. PIYARATANA UNNANSE, and
2. AMUNUGAMA RATANAPALA THERO, both of the
Degaldoruwa Vihare in Lower Dumbara.....*Plaintiffs.* 20

vs.

No. 45415.

1. WAHAREKE SONUTTARA UNNANSE,
2. WAHARAKE GUNARATANA UNNANSE,
3. AKWATTE DEWAMITTA UNNANSE, and
4. MADUGALLE SEELAWANSA UNNANSE, all of
Malwatte Vihare in Kandy.....*Defendants.*

On this 4th day of July, 1934.

The plaint of the Plaintiffs abovenamed appearing by their Proctor, Michael Arnoldus Vanderwall, states as follows:—

30

1. The first Plaintiff is the incumbent Priest of the Degaldoruwa Vihare and second Plaintiff is the Trustee of that temple.

2. The Defendants are Buddhist Priests residing at the Malwatte Vihare in Kandy.

No. 2.
Plaint of
the Plaintiffs
4-7-34--Conti-
nued.

3. Moratota Mahanayake Unnanse alias Moratota Rajaguru Dharmas-kande Mahanayake Sami was the incumbent of the Degaldoruwa Vihare in Amunugama in the District of Kandy, and as such was entitled to the Meda Pansala situate at the Malwatte Pansala in Kandy with the right to occupy the same.

4. The said Vihare with its appurtenances was held by the said Moratota under the tenure of Sissiya Paramparawa or pupillary succession.

10 5. On the death of Moratota Mahanayake Unnanse the said Meda Pansala and the land belonging thereto devolved on his pupils Seelawansa Unnanse and Paranatala Anunayake Unnanse who was afterwards beheaded, whereupon his share as pupillary heir vested in his co-pupil Seelawansa Unnanse.

6. On Seelawansa Unnanse's death the said Meda Pansala devolved on his pupil Balaharuwe Sonuttara Unnanse on whose death this Pansala devolved on his pupil Paranatala Ratanapala Unnanse and on his disrobing himself this Pansala devolved on his three pupils Sumana Unnanse, Ratanapala Unnanse and Sumangala Unnanse.

20 7. Of these pupils Sumana Unnanse died leaving no pupil and Sumangala Unnanse disrobed himself but left no pupil. Thereupon all pupillary rights converged in Ratanapala Unnanse and on his death devolved on Amunugama Ratanapala Unnanse.

8. The last named pupil threw off robes in or about the year 1887 and thereupon the said Meda Pansala with the right of possession devolved on his sole pupil the first Plaintiff.

30 9. The first Plaintiff and his predecessors in the incumbency of the Degaldoruwa Vihare held and possessed the said Meda Pansala undisturbedly and uninterruptedly in terms of Section 14 of the Ordinance No. 22 of 1871 and the Degaldoruwa Vihare has by such possession acquired a title to the said Meda Pansala by prescription.

10. The second Plaintiff is the duly appointed Trustee of the said Degaldoruwa Vihare, and as such is interested in the management of the property belonging to the Degaldoruwa Vihare.

11. The Plaintiffs complain that the Defendants since about two years ago are disputing the right of the first Plaintiff the incumbent of the Degaldoruwa Vihare to possess and occupy the same and are wrongfully preventing the first Plaintiff from exercising his right as incumbent of the said Vihare to occupy the said Meda Pansala to the loss and damage of the 1st Plaintiff of Rs. 100/-.

40 12. The Plaintiffs estimate the subject-matter of this action at Rs. 2,000/-.

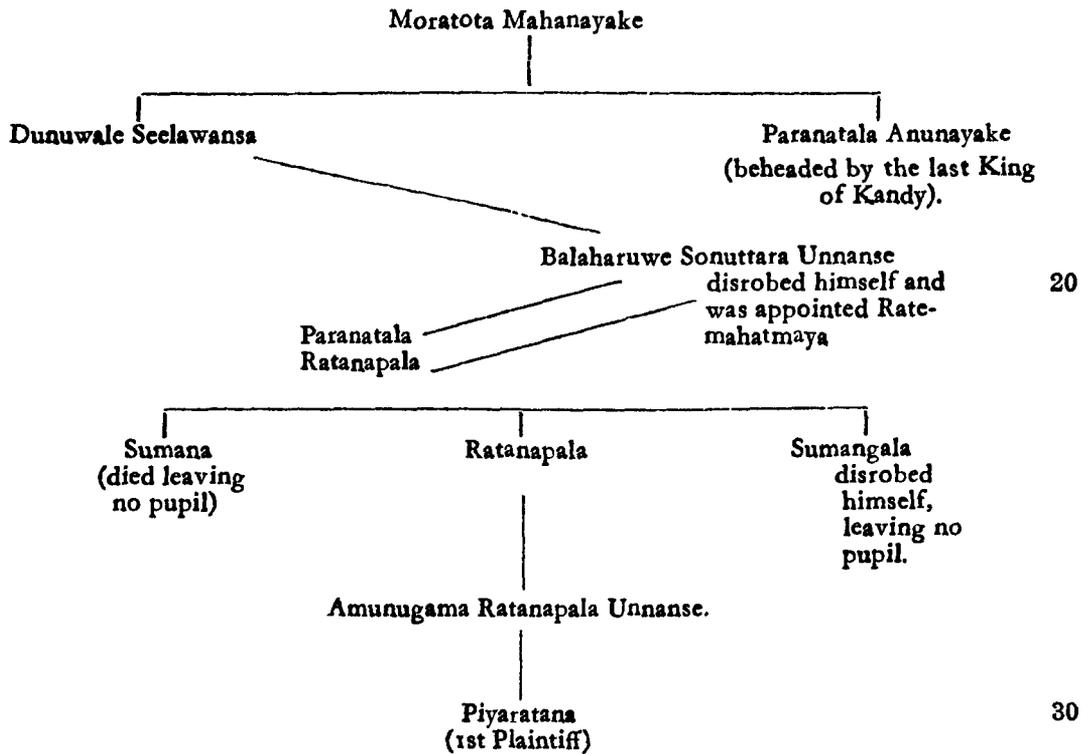
No. 2.
Plaint of
the Plaintiffs
4-7-34—Conti-
nued.

Wherefore the Plaintiffs pray :—

1. That the said Meda Pansala may be declared to be part and parcel of the endowments of the Degaldoruwa Vihare and as such vested in the Plaintiffs.
2. That first Plaintiff be declared entitled to the possession thereof.
3. That the Defendants may be ejected from the said Meda Pansala and that the Plaintiffs may be placed in possession thereof.
4. That the Defendants jointly and severally may be decreed to pay to the Plaintiffs the said sum of Rs. 100/- as damages and further mesne profits at the rate of Rs. 50/- per annum from the date of this action, and 10
5. For such further and other relief as to this Court shall seem meet.

(Sgd.) MICHAEL A. VANDERWALL,
Proctor for Plaintiffs.

Plaintiff's Pedigree of Title.



(Sgd.) MICHAEL A. VANDERWALL,
Proctor for Plaintiff.

No. 3

Answer of the 1st and 2nd Defendants.

No. 5.
Answer of
the 1st & 2nd
Defendants
28-11-34

On this 28th day of November, 1934.

The answer of the 1st and 2nd Defendants abovenamed appearing by their Proctor Loku Banda Ratnayake states as follows :—

1. These Defendants admit the averments in paragraph 2 of the plaint and state that they are unaware of the averments contained in paragraphs 1 and 10 thereof.

2. These Defendants specially deny the averments contained in paragraphs 3, 4, 5, 6, 7, 8, 9, 11 and 12 of the plaint and put Plaintiffs to the strict proof thereof.

3. These Defendants deny that Moratota Mahanayake Unnanse was entitled to Meda Pansala referred to in paragraph 3 of the plaint as he was the incumbent of Degaldoruwa Vihare and specially deny that Meda Pansala was appurtenant to the said Degaldoruwa Vihare.

4. These Defendants by way of further answer state that Parusala Rajaguru Dhammakanda Dhammajothi Anunayake Thero of Malwatte was seized and possessed of Meda Pansala situated at Malwatte and he by his Last Will No. 4919 dated 1st June, 1902, bequeathed to his pupils (1) Ganegoda Piyaratana, (2) Timbiriwewe Sumana, (3) Yatiwawala Seelaratana, (4) Wahareke Rajaguru Dhammakanda Sonuttara (1st Defendant), (5) Batugedera Ratanajothi, (6) Wahareke Gunaratana (2nd Defendant), (7) Akwatte Dewamitta (3rd Defendant), who upon the death of the said Dhammajothi Anunayake Unnanse became entitled to the said Meda Pansala and held the same as Sanghika property under Sisyanu Sisya Paramparawa inheritance.

5. The said Yatiwawala Seelaratana Unnanse died leaving his sole pupil the 4th Defendant who became entitled to the pupillary share held by the said Seelaratana Unnanse.

6. The said (1) Batugedera Ratanajothi, and (2) Timbiriwewe Sumana disrobed and the said (3) Ganegedera Piyaratana died all leaving no pupils and all their right to pupillary succession vested in these Defendants and 3rd and 4th Defendants.

7. Defendants and their predecessors in title have been in the undisturbed and uninterrupted possession of Meda Pansala for over a period of 75 years by a title adverse to and independent of Plaintiffs or their predecessors in title if any and all others and have acquired a prescriptive title thereto.

8. Defendants and their predecessors have from time to time effected improvements to the said Meda Pansala at a cost of over Rs. 20,000/- which Defendants claim in reconvention in the event of Plaintiffs being declared entitled to the said Meda Pansala.

No. 3.
Answer of
the 1st & 2nd
Defendants
28-11-34—*Conti-
nued.*

9. These Defendants state that the plaint is very vague and does not sufficiently disclose a cause of action.

Wherefore these Defendants pray :—

- (1) The Plaintiffs' action be dismissed with costs.
- (2) That they be declared entitled to Meda Pansala.
- (3) That in the alternative they be allowed compensation in a sum of Rs. 20,000/-.
- (4) For costs in this behalf incurred and for such other and further relief as to this Court shall seem meet.

(Sgd.) L. B. RATNAYAKE, 10
Proctor for 1st and 2nd Defendants.

No. 4

No. 4.
Answer of
the 3rd and 4th
Defendants
28-11-34

Answer of the 3rd and 4th Defendants.

The 28th day of November, 1934.

The answer of the 3rd and 4th Defendants abovenamed appearing by their Proctor Victor Mahima Guruswamy states as follows :—

1. These Defendants admit the averments contained in paragraphs 1, 2 and 10 of the plaint.

2. Answering to paragraph 3 of the plaint, these Defendants whilst admitting that Moratota Mahanayake Unnanse alias Moratota Rajaguru 20 Dhammakanda Mahanayaka Sami was the incumbent of the Degaldoruwa Vihare in Amunugama deny that he as such was entitled to the Meda Pansala referred to therein with the right to occupy the same.

3. These Defendants admit the averments in paragraph 4 of the plaint save that Meda Pansala was appurtenant to the said Degaldoruwa Vihare.

4. Answering to paragraphs 5, 6, 7 and 8 of the plaint, these Defendants put Plaintiff to the proof of the averments therein.

5. Answering to paragraph 9 of the plaint, these defendants specially deny that the 1st Plaintiff and his predecessors in the incumbency of Degaldoruwa Vihare, held and possessed the said Meda Pansala or that they 30 or the Degaldoruwa Vihare have acquired a title thereto by prescription.

6. Answering to paragraph 11 of the plaint these Defendants admit that they dispute the right of the 1st Plaintiff to possess and occupy Meda Pansala and are in possession of the same.

They deny that such possession is wrongful or that the 1st Plaintiff has suffered in consequence any loss or damage whatsoever. These Defendants specially deny that they began to dispute the 1st Plaintiff's title two years ago.

No. 4-
Answer of
the 3rd and 4th
Defendants
28-11-34—Conti-
nued.

7. Answering to paragraph 12 of the plaint, these Defendants state that the subject-matter of this action is worth Rs. 20,000/-.

8. For further answer these Defendants state that one Parusala Rajaguru Dhammakanda Dhammajothi Anunayake Unnanse was well and truly entitled to the said Meda Pansala and was in possession of the same till his demise in the year 1902.

9. The said Parusala Rajaguru Dhammakanda Dhammajothi Anunayake Unnanse left behind him 7 pupillary heirs, namely :—

1. GANEGODA PIYARATANA UNNANSE,
2. TIMBIRIWEWE SUMANA UNNANSE,
3. YATIWAWELE SEELARATANA UNNANSE,
4. WAHAREKE SONUTTARA UNNANSE, the 1st Defendant abovenamed,
5. BATUGEDERA RATANAJOTHI UNNANSE,
6. WAHAREKE GUNARATANA UNNANSE, the 2nd Defendant abovenamed, and
7. AKWATTE DEWAMITTA UNNANSE, the 3rd Defendant abovenamed.

10. Ganegoda Piyaratana Unnanse abovenamed died in 1909 leaving him surviving Akwatte Dewamitta Unnanse, the 3rd Defendant abovenamed as his pupillary heir, by reason of his having been presented for ordination by him. Timbiriwewe Sumana Unnanse disrobed himself leaving no pupils. Yatiwawela Seelaratana Unnanse died in 1932 leaving him surviving as pupillary heir Madugalle Seelawansa Unnanse, the 4th Defendant abovenamed and Batugedera Ratanajothi Unnanse disrobed himself leaving no pupils, and thus the 1st, 2nd and 3rd and 4th Defendants abovenamed are in possession of the said Meda Pansala as the surviving heirs of the said Parusala Rajaguru Dhammakanda Dammajothi Anunayake Unnanse.

11. These Defendants and their predecessors in title have been in the undisturbed and uninterrupted possession of Meda Pansala in terms of Section 14 of Ordinance No. 22 of 1871 and have acquired a title thereto by prescription.

12. These Defendants state that save and except a small part of the buildings presently constituting the Meda Pansala the rest were constructed by the said Parusala Rajaguru Dhammakanda Dhammajothi Anunayake

No. 4.
Answer of
the 3rd and 4th
Defendants
28-11-34—Conti-
nued.

Unnanse and by these Defendants at a cost of Rs. 15,000/-. In the event of the Plaintiffs being declared entitled to the possession of the said Meda Pansala these Defendants pray that the Plaintiffs be decreed to pay to the Defendants the said sum of Rs. 15,000/- until which payment these Defendants claim to be in possession of the same.

Wherefore these Defendants pray :—

(a) For the dismissal of this action with costs or in the event of the Plaintiffs being declared entitled to the possession of the said Meda Pansala.

(b) That the Plaintiffs be decreed to pay to the Defendants the said sum of Rs. 15,000/- as compensation for the buildings constructed by the Defendants and their predecessor aforesaid.

(c) That the Defendants be permitted to remain in possession of the said Meda Pansala till so compensated by the Plaintiffs.

(d) For costs of suit in this behalf incurred, and

(e) For such other and further relief as to this Court shall seem meet.

(Sgd.) V. M. GURUSWAMY,
Proctor for 3rd and 4th Defendants.

No. 5

Issues Framed.

DISTRICT COURT OF KANDY.

20

No. 45415.

16-5-1935.

Plaintiffs and Defendants present.

1. Mr. M. A. VANDERWALL for Plaintiffs.
2. Mr. A. PERERA with Mr. RATNAYAKE for 1st and 2nd Defendants.
3. Mr. RAJARATNAM with Mr. GURUSWAMY for 3rd and 4th Defendants.

Mr. Vanderwall for Plaintiffs informs the Court that the arrangements he expected to be able to make to-day for the services of counsel not having been possible and as the case is a complicated one, and he does not wish to take the responsibility of conducting the case himself and moves for a postponement to enable him to retain counsel.

Messrs. Advocate A. Perera and Rajaratnam for the Defendants state that they were aware of the situation and the position Plaintiffs are placed in to-day and consequently have no objection to the application being allowed. In the circumstances I allow the application as I feel that the Plaintiff will be otherwise prejudiced.

No. 3.
Issues framed
16-5-35—Con-
tinued

Refix trial for 12th November, 1935.

(Sgd.) W. E. BARBER,
16-5-35. D.J.

12-11-35.

10 Mr. Sansoni with Mr. Vanderwall for Plaintiffs.

Mr. A. Perera and Mr. Thalgodapitiya with Mr. Ratnayake for 1st and 2nd Defendants.

Mr. Rajaratnam with Mr. Guruswamy for 3rd and 4th Defendants.

Mr. A. Perera suggests the following issues :—

1. Was Meda Pansala an appurtenant of Degaldoruwa Vihare ?
2. Was Moratota Mahanayake Unnanse the Adhikari Bhikshu of the Degaldoruwa Vihare and as such entitled to Meda Pansala ?
3. Are the persons referred to in paras 5 to 8 in the plaint the pupillary successors of Moratota Mahanayake ?
- 20 4. If so, have they resided in the said Pansala till about two years ago as averred in para 11 of the plaint ?
5. Is the said ouster fictitious ?
6. Is the Plaintiff's cause of action prescribed ?
7. Was Parusala Dhammajothi Anunayake Thero from prior to 1885 in possession of the said Pansala as Adhikari Bhikshu till his death in 1902 ?
8. Had the said Parusala and his pupils possessed for over the prescriptive period the sacerdotal rights of the said Pansala and acquired a title thereto ?
9. Did Parusala and his pupillary successors effect improvements to the said Pansala ?
- 30 10. If so, what are the costs of such improvements ?
11. If the Plaintiff is held entitled to the premises, are Plaintiffs liable to pay Defendants the costs of such improvements and are they entitled to a *jus retentionis* ?

(It is admitted that Degaldoruwa Vihare is in Patha Dumbara and that Meda Pansala is in Malwatte, Kandy Town. It is agreed that the question of the value of the improvements is to be decided after the other issues of fact

No. 3.
Issues framed
16-5-35—Conti-
nued

are decided. In answer to Mr. Sansoni, Mr. Perera says issue 8 covers para 7 of his answer).

Mr SANSONI as an alternative to 8, suggests :—

8a. Have Defendants and their predecessors in title been in the undisturbed and uninterrupted possession of the said Pansala for over 75 years and acquired a prescriptive title thereto ?

12. Is the 1st Plaintiff entitled to claim possession of the Meda Pansala ?
Issues accepted.

Mr. SANSONI opens :—

(In answer to the Court the defence states status of 1st Plaintiff to be 10 Adhikari Bhikshu of Degaldoruwa Vihare is not in issue in this case. Defence is, even admitting that, it does not make him have rights in Meda Pansala *qua* Adhikari Bhikshu of Degaldoruwa Vihare).

Mr. SANSONI calls :—

No. 6

Plaintiffs' Evidence.

No. 6.
Plaintiffs'
Evidence.
Piyaratana
Examination.

A. PIYARATANA UNNANSE, affirmed, 1st Plaintiff, age 58. Adhikari Bhikshu of Degaldoruwa Vihare. So far as I know before me Ratanapala Unnanse (No. 3) was incumbent. I have heard that the 1st Adhikari Bhikshu was Moratota Mahanayake Unnanse. I have heard that 20 Moratota's pupils were Paranatala Anunayake Unnanse who was beheaded by the Sinhalese King and Seelawansa Unnanse. His pupil was Sonuttara and his pupil was Ratanapala (No. 1). He disrobed himself, but left three pupils. Sumana who died without pupils, Ratanapala (No. 2) through whom I claim and Sumangala who left no pupils. Ratanapala (2) was succeeded by Ratanapala (No. 3) and I am the pupil of Ratanapala (3) who disrobed himself in 1887.

I was born in 1877. I became a major in 1898. Ratanapala (No. 1) executed Deed 11006 of 7-5-49—P1 (Mr. Perera objects to P1. He admits 30 it is an ancient document and there is a presumption of its execution, but he does not admit that the statements in P1 are correct.

Mr. SANSONI urges that the contents of P1 are legally admissible evidence. I think it best to admit the document, leaving the question of admissibility and credit to be dealt with in the Judgment).

In P1 Ratanapala sets out the earlier devolution of the Degaldoruwa Vihare. The deed is in favour of four persons, namely the 3 pupils of Ratanapala (No. 1) and the 4th person Parusala (note : this is the person

through whom the defence claims). P₁ purports to convey certain lands belonging to Degaldoruwa Vihare. (Mr. Sansoni says P₁ directs the 4 donees to improve the Pansala which belong to Moratota and states that any work might be done through the subjects or tenants of Degaldoruwa Vihare. Mr. Sansoni's point is that the Pansala referred to is the Meda Pansala). I know the Pansala in question. I am claiming the Meda Pansala in my capacity as Adhikari Bhikshu of Degaldoruwa Vihare. I say that a Pansala is a dwelling house of a monk. I also produce 11004 of 7.5.49—P₂. (admitted, subject to the same observations as before).

No. 6.
Plaintiffs'
Evidence.
Piyaratana
Examination—
Continued.

10 By P₂ Ratanapala (1) purported to give the house and timber of the Pansala of Moratota Chief Priest together with the said Pansala standing at Malwatte Vihare in Kandy including the garden attached thereto of one amunam to 5 persons, *viz.* the 4 mentioned in P₁ and one Dunumale, the pupil of Mahalle Unnanse. P₂ also states that the services of the said Pansala shall be caused to perform by the person subject to Salawe Vihare and Degaldoruwa Vihare.

(To Court :—

I am also Adhikari Bhikshu of Salawe Vihare). I claim that incumbency through my tutor going up to Moratota Mahanayake Unnanse. I also produce 5962 of 11-9-44, P₃ (Mr. Perera says P₁ to P₃ being prior to 1859 should be registered. Mr. Perera, however, does not press this objection), Mahalle is the executant of P₃. He gives every room and the timber and all other substance therein which are in the Pansala of Moratota Mahanayake Priest in the Malwatte Vihare, Kandy, and the garden with fruit trees in that Pansala of one amunam to Paranatala Ratanapala (1) and Dunumale and Parusala.

(Mr. Perera now says he has no objection to P₃). Defendants claim title through Parusala. In District Court, Kandy, 81630 of 1879 Parusala sued Ratanapala (3) about Degaldoruwa Vihare.

(Counsel puts in *Plaint P₄*, *Answer P₅*, *Replication P₆*, Counsel says that the Supreme Court Judgment is reported in 4 Supreme Court Circular 121. Parusala claimed the incumbency of Degaldoruwa on P₁).

Parusala claimed to succeed as the pupillary successor of the donor on P₁ and denied the rights of Ratanapala (3). Ratanapala (3) pleaded he was the incumbent. The Supreme Court held that Parusala was not the pupillary successor of Moratota and Parusala lost the case. Then in 1882 Parusala again sued Ratanapala (3) in District Court, Kandy, 90099.

(Counsel puts in *Plaint P₇*.

Answer P₈.

Replication P₉.

40 *District Court Judgment, P₁₀*.

Supreme Court Decree, P₁₁).

No. 6.
Plaintiffs'
Evidence.
Piyaratana
Examination—
Continued.

There Parusala changed his tactics. He said Moratota had three pupils. Dunumale Seelawansa, Sonuttara and Mahalle. He also pleaded Mahalle had 3 pupils:—

Ratanapala (1)

Dunumale and himself. There it was held that Mahalle was not a pupil of Moratota. That decision was given in 1885 (Counsel says in P2 Ratanapala (1) recites his 2nd tutor is Mahalle and that the Sannas of this Vihare is given as Saka 1717. See Lawrie's Gazetteer, Vol. 1, pages 139 and 140.) (In answer to the Court Counsel says that the Sannas he is referring to is not the Sannas of Degaldoruwa Vihare but of Meda Pansala referred to in P2). 10

Mr. Perera objects to this as new matter. (Sannas must be produced. Sannas must be registered). I have tried to get the Sannas referred in P2, but have failed. It must have been registered. I don't know where that Sannas is. As Defendants later became friendly with Ratanapala (3) they may have it. When Ratanapala (3) disrobed himself in 1883 I was a minor and residing at Degaldoruwa and Meda Pansala in Malwatte. During my minority T. B. Paranatala looked after Degaldoruwa and all the temples of which Moratota was Adhikari Bhikshu.

Q. Did he appoint any Priest?

A. Yes. He appointed 2nd Defendant Adhikari Bhikshu of Selawa 20 Vihare, and 1st Defendant to Menikcumbure.

He also appointed Akwatte Dewamitta to Degaldoruwa and as such Akwatte Dewamitta had charge of Meda Pansala. T. B. Paranatala held a Power of Attorney, Akwatte Dewamitta gave a lease No. 1697 dated 16-6-94, P12, to Burmister, Manager of a Cocoa Company. That deed refers to a land belonging to Degaldoruwa. At that date I was 17. Akwatte Dewamitta was a pupil of Parusala.

Q. With this bitter litigation how did Parusala's people come into contact with Degaldoruwa?

A. I was a minor and T. B. Paranatala asked these people to look after 80 these things.

By these people I mean Akwatte Dewamitta. I was also given in his charge. 3rd Defendant is Akwatte Dewamitta's pupil. 1st, 2nd, 3rd and 4th Defendants are all claiming through pupillary succession from Parusala.

During my minority Akwatte Dewamitta looked after Meda Pansala. There may have been other priests at Meda Pansala through Degaldoruwa. I was a minor at that time. When I became a major the incumbency of Degaldoruwa remained as before and nothing new happened. I became the Adhikari Bhikshu when I attained 21. I removed Akwatte Dewamitta and told him to remain in Meda Pansala. 40

(In answer to a leading question from me).

(To Court:—

When the Sinhalese Kings gave Degaldoruwa to Moratota he was an Anunayake of Malwatte Vihare. When Moratota became Mahanayake he was given Meda Pansala as well).

No. 6.
Plaintiffs'
Evidence.
Piyaratana
Examination—
Continued.

When I visit Kandy I stay at Meda Pansala. When I am not in Kandy Defendants are there. They remained there with my leave and licence Till two years ago Defendants never questioned my rights to Meda Pansala.

Q. As Adhikari Bhikshu have you done anything with Meda Pansala?

A. When I come to Kandy I go there and have my meals. I also send people to repair the place if necessary. I sued the tenants.

10 They are tenants of Degaldoruwa and Meda Pansala. Seelaratana is the tutor of 4th Defendant. He was living at Meda Pansala with my leave and licence. He died in 1932. Then it was that these Defendants started this dispute. So long as Seelaratana lived they raised no dispute.

Cross-examined by Mr. PERERA.

T. B. PARANATALA made the appointment. I would have been about 15 then. Parusala was alive at that time. Parusala died in 1902 at Meda Pansala. Akwatte is older than myself. He is about 60 years older than I. When Paranatala gave me in his charge he was about 60 years older than I. His tutor Parusala must have been about 90. At the time Akwatte took charge of me one Parusala was residing at Meda Pansala. At the time Ratanapala (3) was alive Parusala was in Meda Pansala having been placed there by Ratanapala (3). Even during the litigation between Ratanapala (3) and Parusala, I don't know where Parusala was living (witness first said he was living at Meda Pansala), Parusala was a member of the Malwatte Sangha Sabha which consists of 20 members including the High Priest. Parusala was the Anunayake. When I was first robed I can't say if Parusala was a member of the Chapter. It is not essential to live within the Malwatte Vihare to be a member of the Chapter. It is true that I want my pupil to get into the Chapter and I want him to live at the Meda Pansala, but that is not essential.

20 He could live at Degaldoruwa.

Degaldoruwa has a Sannas. The King gave a Sannas for Degaldoruwa. Meda Pansala also has a Sannas. I attempted to procure a copy of it. The reply Government gave was that as the number was not given, the copy could not be given.

(Counsel for Plaintiff hands to Mr. Perera the reply—D1). The two Sannases are separate and distinct. Degaldoruwa has its own registered tenants and the Service Tenure Register will detail what services they have to perform. I have a copy of that register. That register does not show that Degaldoruwa tenants have to perform services for Meda Pansala, but the deed says so. Kirthi Sri Rajasinghe gave the Degaldoruwa Sannas.

40 I don't know which King gave the Meda Pansala Sannas. There are tenants

No. 6.
Plaintiff's
Evidence.
Piyaratana
Cross-examina-
tion—Continued.

for Meda Pansala who come from Matale, Dunuwille and Selawa. There are lands dedicated to Meda Pansala. The Service Tenure Register should show them. The tenants of Degaldoruwa perform the services of Meda Pansala. Malwatte Vihare consists of an aggregation of Pansalas with an Ordination Hall or Poyage in the centre. The Poyage is also used as the Buduge of the Vihare.

I don't know whether under the Temporalities Ordinance a trustee was appointed for the Malwatte Vihare. Why don't I know who controls Malwatte? Why should I concern myself with matters like that? Malwatte belongs to the priests. A trustee has to be appointed for a Vihare. 10 I will not be surprised if the Mahanayake says that a Dehigama is the trustee of Malwatte, because a Poyage is a Vihare, but I can't give names.

I never allowed a trustee to be appointed for Degaldoruwa.

I have given leases of the temporalities to companies. Before Dr. Paul Peries' time I would accept no trustees as they are all rogues. 2nd Plaintiff is a young pupil of mine. He is closely related to me as a nephew and as a son. He is about 22. He was a major when action was filed.

2nd Plaintiff is the trustee of Degaldoruwa temple appointed by Dr. Peries. He is the first trustee appointed. He is an honest man. It was Dr. Peries who said he would appoint 2nd Plaintiff trustee. The Mahanayake of Mal- 20 watte is my witness. I robbed 2nd Plaintiff. For the Upasampada the High Priest was the tutor. I am an Upasampada priest fully ordained. I have not registered under the new law. I am claiming as a fully ordained Upasampada priest. I don't know whether non-registration is an offence.

I don't know when the new Buddhist Temporalities Ordinance came into operation. It was after that Ordinance that I thought of filing action.

Whether the only temple in which Parusala lived in Malwatte is Meda Pansala or not, I can't say. I can't say whether when I first went to Malwatte Parusala was at Meda Pansala. I have never been to Malwatte with my tutor Ratanapala (3). I have not seen Ratanapala (3) living at Meda Pansala. In 30 the time of Ratanapala (2) I was not born.

(To Court :

Ratanapala (3) is alive. No, he is dead). I know that Ratanapala comes to Kandy, but I did not even know where Kandy was. After Ratanapala (3) disrobed I came to Kandy. I may have been 18 or 20. When I first came for Upasampada I was 21. That was the first time I saw Meda Pansala. At that date Akwatte was living in Meda Pansala, but I did not know about Parusala. I have not seen him.

If Parusala was living at Meda Pansala till 1902 I must have seen him, but I never saw him. I saw 3rd Defendant and 4th Defendant. The pupils 40 of the Akwatte I referred to is in Court.

Parusala must have predeceased Akwatte.

I did not attend Parusala's cremation. I did not know about it. I did not hear of his death either. When I was presented for Upasampada the Anunayake was Rambukwelle High Priest. I came from Degaldoruwa and went to Meda Pansala. I can't remember if Parusala was there then. That was in 1898. Deceased Seelaratana was there. 1st Defendant was also there. No—not in the Meda Pansala. He comes there.

No. 6.
Plaintiff's
Evidence.
Piyaratana
Cross-examina-
tion—Continued.

It is not true that I have not been to Meda Pansala. It was 1st Defendant who gave me tea and asked me not to go to Court. I waited for one year without filing plaint.

10 Seelaratana died in 1932. The cup of tea episode took place 2 or 3 months after Seelaratana's death. I went there to exercise my rights. Seelaratana died in the Colombo Hospital. His body was brought to Meda Pansala for cremation. I attended the funeral, but did not go to the cremation place. I was well treated. I then went to Degaldoruwa. Two months later I came to Meda Pansala and met 1st Defendant.

Q. Why did you then begin discussing the question of Meda Pansala?

A. I had not been paid my rent by 1st Defendant in regard to some Katugastota boutique.

20 Meda Pansala has boutiques appurtenant thereto. Those boutiques belong to the Menikcumbure Vihare of which 1st Defendant claims to be Adhikari Bhikshu. He does not live in one place. I am also claiming to be Adhikari Bhikshu of Menikcumbure.

Q. When you spoke to 1st Defendant about Menikcumbure temple why did you discuss Meda Pansala?

A. He claimed the lot.

I have filed no actions about Menikcumbure or Selawa. I will go and take the rents. Defendants are wrongfully misappropriating my profits and rents. They have been doing this for the last 1 or 2 years. They did not dispute my rights before that. The dispute began after Seelaratana's death.
30 I don't know if Selawa Vihare has a trustee.

Selawa may have had a trustee, but I had given the place to 2nd Defendant. Menikcumbure had no trustee.

I am not aware whether Parusala wrote a Will. This is the first time I hear of it.

(Sgd.) R. F. DIAS,
D.J.
12-11-35.

It is 4-30 p.m. and the further hearing is adjourned for 3rd December, 1935.

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(Sgd.) R. F. DIAS,
D.J.
12-11-35.

No. 6.
Plaintiff's
Evidence.
Piyaratana
Cross-examina-
tion—Continued.

3-12-35.

Appearances as before.

Mr. PERERA says he does not wish to cross-examine the last witness further. Nor does Mr. Rajaratnam.

Mr. SANSONI says his client is suffering from fever and is unfit to be re-examined to-day, also that he has not been properly instructed.

The other side objects.

I don't think a case has been made out for a postponement, but I will give Plaintiff the indulgence to be recalled to be re-examined.

Mr. SANSONI calls :

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Ratanajothi
Examination.

RATANAJOTHI UNNANSE, affirmed, age 63. Incumbent of Sirimalwatte Vihare. I knew Parusala. I also knew Amunugama Ratanapala Unnanse (No. 3). He had two pupils. I am referring to the Ratanapala who disrobed himself. One pupil was Seelawansa who disrobed himself. The other pupil is 1st Plaintiff. I have heard of litigation between Parusala and Ratanapala (3). That was before my time. After those cases Parusala lost the day, but I knew that Akwatte Dewamitta (No. 1) went to Degaldoruwa. Akwatte Dewamitta was the pupil of Parusala.

A. Dewamitta stayed at Degaldoruwa for 5 or 6 years. From Degaldoruwa he came back to Meda Pansala. At the time A. Dewamitta was at Degaldoruwa, Plaintiff was a boy. Ratanapala (3) disrobed himself. I have known Meda Pansala for some time. I have seen 1st Plaintiff there. I have seen him at Meda Pansala during the last 40 years. I also own a Pansala at Malwatte. I visit my temple at Malwatte about 15 times a month. I stay mostly at Meda Pansala.

I went there to learn from Akwatte Dewamitta. I last stayed at Meda Pansala 25 years ago. I have seen 1st Plaintiff there off and on.

I am the Adhikari Bhikshu of Sirimalwatte Vihare, close to Degaldoruwa.

Ratanajothi
Cross-examina-
tion.

Cross-examined by Mr. PERERA.

I am the tutor of 2nd Plaintiff. He does not belong to my pupillary line. I robed him by agency. 2nd Plaintiff's real tutor is 1st Plaintiff. I am 63. I received Upasampada in 1899. I was a Samanera before that for about 6 years. While I was a Samanera I knew about Meda Pansala.

While I was a Samanera I have spent weeks at Meda Pansala. That was previous to 1899. At that date Parusala was living at Meda Pansala. He was living there with his pupils. He had several pupils. His pupil Seelaratana was there. He was at Degaldoruwa also. 1st Defendant was there and also at Menikcumbure. Akwatte Dewamitta's pupil is here. He is 3rd Defendant. 2nd Defendant was there and we studied together. 2nd Defendant is Parusala's pupil. 4th Defendant is Seelaratana's

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pupil. 4th Defendant was also there and also at Selawa. When I was a Samanera the big man at Meda Pansala was Parusala. He was the Anunayake of the Malwatte Chapter. He was in the Meda Pansala when I took Upasampada. While I was a Samanera, to my knowledge, I have seen 1st Plaintiff there, but I can't say if he was living there. I studied with 3rd Defendant not at Meda Pansala but at Degaldoruwa. While I was a Samanera I have slept for 2 or 3 nights in the Meda Pansala. It was A. Dewamitta (1) who took me, *i.e.*, Parusala's pupil. I can't say if I slept in the Meda Pansala when 1st Plaintiff was also staying overnight. 1st Plaintiff and I were almost brought up together at Degaldoruwa. 1st Plaintiff and I have stayed at Degaldoruwa not for many years but for 1 or 2 years. I left 1st Plaintiff at Degaldoruwa and I went to Sirimalwatte. It was when I was at Degaldoruwa that I went to Meda Pansala. Both 1st Plaintiff and I went with Dewamitta (No. 1) to Meda Pansala. Parusala showed us much kindness. My knowledge of Meda Pansala does not extend beyond 1893. I have been to Meda Pansala after I became Upasampada. Parusala was the chief person there. His pupils assisted him. I attended Parusala's cremation.

No. 6.
Plaintiff's
Evidence.
Ratanajothi
Cross-examina-
tion—Continued.

(Parusala's death certificate put in D₂—date of death 6-6-1902).

It was 3 years after I received Upasampada. After Parusala's death I went to Meda Pansala. I can't say if Seelaratana was the big man there but I know Parusala's pupils were there and they entertained me. My last visit to Meda Pansala was about 2 months ago. It may be four months ago. I took tea there. Between 1902 and four months ago it was Parusala's pupils who entertained me. I have also similarly visited Degaldoruwa and similarly 1st Plaintiff entertained me there. I have also similarly visited Selawa and Parusala's pupils entertained me there. I also went to Menikcumbure and Parusala's pupils entertained me there too. I attended the cremation of Akwatte Dewamitta (No. 1) (death certificate put in D₃—dated 8-6-01). (This is to prove that Dewamitta (1) predeceased Parusala).

Cross-examined by Mr. RAJARATNAM.

No questions.

Re-examined.

Every year for Wesak I go to Malwatte Vihare and stay a month as I am a member of the Chapter. On other occasions too I go as I have my Pansala. It is called Watারেකe Pansala. Several monks live there. On my visits I have seen 1st Plaintiff at Meda Pansala.

Ratanajothi
Re-examina-
tion.

(To Court :—

The Mahanayake of Malwatte exercises discipline over the whole of the ground of Malwatte. The Mahanayake would have jurisdiction over

No. 6.
Plaintiff's
Evidence.
Ratanajothi
Re-examination
—Continued.

Watareke and Meda Pansalas. He should, therefore, know all about Watareke and Meda Pansalas.

(Sgd). R. F. DIAS,
D. J.
3-12-35.

Ukku Banda
Examination.

W. M. UKKU BANDA, affirmed, age 72, Cultivator, live at Amunugama. I have accompanied 1st Plaintiff to Kandy. He goes to the Meda Pansala at Malwatte.

(To Court :—

He also sees the Mahanayake. He also goes to those temples which are 10 known to him—nowhere else).

I have come with him once or twice a month. On those occasions he was not refused admission to the Meda Pansala. I first came with 1st Plaintiff to the Meda Pansala about 10 years ago.

Ukku Banda
Cross-
examination.

Cross-examined by Mr. PERERA.

I am not a Dayakaya of Degaldoruwa Vihare. Nor am I interested in it.

I never petitioned about Degaldoruwa to the Mahanayake.

I know Parusala. He was an influential monk. I have known Meda Pansala for about 60 years. Ever since I remember Parusala was living there, but 1st Plaintiff also went there. Parusala lived there with his pupils. I don't 20 know Piyaratana, Parusala's pupil. I know Meda Pansala before 1st Plaintiff was born. Parusala lived in Meda Pansala till he died. I also considered him to be the Adhikari Bhikshu of Meda Pansala. I don't know which of his pupils disrobed. Meda Pansala has a compound. A road to Hillwood College goes from this monastery. I don't remember the road being opened. I don't go to Meda Pansala often. I go 4 or 5 times a year. I knew the compound without the road. I first saw the road to Hillwood 2 or 3 years ago. I have not accompanied 1st Plaintiff to Meda Pansala while Parusala was there. I went with him "nikan." He asked me to accompany him. I did not attend the cremation of Parusala. I first went with 1st Plaintiff 30 to Meda Pansala about 1 or 2 years after Parusala's death. Then Akwatte Dewamitta (1) was the big man at Meda Pansala. I am sure about it and 1st Plaintiff spoke to Dewamitta (1). Akwatte Dewamitta's servants gave 1st Plaintiff tea. We went to Meda Pansala because 1st Plaintiff used to go to exercise his rights in Meda Pansala. I don't know what the object of the visit was. I attended Dewamitta's (1) cremation. Between the deaths of Parusala and Dewamitta I went 3 or 4 times to Meda Pansala. I have seen these Defendants there. Seelaratana died quite recently. Between Dewamitta's death and Seelaratana's death I went with 1st Plaintiff to Meda Pansala 3 or 4 times. I have seen these Defendants there then and I accepted Y. Seelaratana 40 as the big person there. I regarded him as Adhikari Bhikshu of Meda Pansala. Parusala died first, then Dewamitta.

Q. Are you sure?

A. I am not certain,

(D₂ and D₃ put to witness). I don't know about them. I have not been to Selawa with 1st Plaintiff nor to Menikcumbure with 1st Plaintiff. 1st Plaintiff did not invite me to go there with him, I have known Selawa for 30 or 40 years. Parusala's pupils are at Selawa. Ever since I knew Parusala's pupils are there. Parusala's pupils are also at Menikcumbure and have been so ever since I knew. Menikcumbure is in Katugastota town and is a rich temple. Parusala's pupils took the produce for Menikcumbure and gave it to 1st Plaintiff, but I did not see that done. I am saying what 1st Plaintiff told me. He told me that long ago not after I received summons. I never saw Parusala at Selawa (witness thinks and adds), I may have seen him there, but not at Menikcumbure. I live near Degaldoruwa. Degaldoruwa temporalities had a trustee but 1st Plaintiff did not allow the trustee to possess. I have come here without a summons. I never received a summons.

No. 6.
Plaintiff's
Evidence.
Ukku Banda
Cross-examina-
tion—Continued.

Cross-examined by Mr. RAJARATNAM.

Nil.

Re-examined

Nil.

(Sgd.) R. F. DIAS,
D. J.

I ask Mr. Sansoni to re-examine the Plaintiff.

3/12.

20 He says he has no question to ask.

Mr. Sansoni asks for another date to call further evidence. He says the witnesses have not come. Mr. Perera leaves the question of postponement to me.

I don't think I will be justified in granting a postponement. Plaintiff should have been ready to-day.

(Sgd.) R. F. DIAS,
D. J.

Mr. Sansoni puts in P₁ to P₁₂ and closes his case.

3-12-35.

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No. 7.

1st and 2nd Defendants' Evidence.

Mr. Perera for the 1st and 2nd Defendants opens.

He calls:—

HERAMITIGALA SRI DEERANANDA NAYAKE UNNANSE, affirmed, age 59. I belong to the Malwatte College and I am the Secretary of the Chapter. My tutor's Vihare is Heramitigala Vihare. I don't myself own a Pansala by pupillary succession in Malwatte but the Chapter has provided me with accommodation. I belong to the Siamese Sect, which has

No. 7.
1st and 2nd
Defendants'
Evidence.
Sri Deerananda
Examination.

No. 7.
1st and 2nd
Defendants'
Evidence.
Sri Deerananda
Examination—
Continued.

two Colleges, Malwatte and Asgiriya. I am of the Malwatte fraternity. Meda Pansala is in the Malwatte College. I am the principal of the Sastra Lankara Pirivena. That is a place where monks are taught the doctrine. I know Degaldoruwa Vihara. I have been there. The word Vihare generally means a monastic establishment.

Within Degaldoruwa Vihare there is a Pansala. A Pansala is also called "Legunge" (resting place). A Vihare also has a Buduge, which also is loosely called Vihare. There is also the Poyage. A Vihare also has a Dagoba containing relics and a sacred Bo-tree. All those things taken together form a Vihare. 10

When a person talks of Degaldoruwa Vihare it takes in the aggregate of all the things I have mentioned, though it is loosely used in regard to the Buduge. In the Pansala live the Adhikari Bhikshu and others in the pupillary succession, and the Adhikari Bhikshu is in charge. Certain things have to be done either by the Adhikari Bhikshu or a deputy. Before the priests take a meal a formal offering is made to the image. The Degaldoruwa priests have a resting place or Pansala at Degaldoruwa itself. Malwatte Vihare comprises everything at Malwatte and is the Malwatte College. Malwatte Vihare contains 12 or 14 chief Pansalas. Some of these Pansalas are held in pupillary succession. The others are under the control of the Chapter. A 20 priest without a temple could be appointed by the Chapter to such Pansalas. I am a member of the Maha Sangha Sabhawa and as Secretary I have special accommodation given me. Malwatte Vihare has a Poyage and Buduge. There is a Dagoba in the Bomaluwa and a sacred Bo-tree.

Since I was 12 years old I knew Meda Pansala, *i.e.*, since I came to Malwatte, 46 years ago. I came to get tuition from the Telwatte priest who had a Pansala at Malwatte and I reside there still. When I first knew it Parusala was living there. His pupils were with him. Parusala was the Adhikari Bhikshu. The Chapter delegates to the High Priest of offering the food at the Buduge before meals. So the Adhikari Bhikshus of the Pansala at Mal- 30 watte have nothing to do beyond worshipping in the Buduge morning and evening. Till Parusala died in 1902 he was the Adhikari Bhikshu of Meda Pansala. I know G. Piyaratana. He was a pupil of Parusala. He belonged to the Chapter. So was T. Sumana. He disrobed. Y. Seclaratana was a pupil of Parusala. 4th Defendant is Seclaratana's pupil. 1st and 2nd Defendants are pupils of Parusala. Akwatte Dewamitta (No. 1) was also a pupil. 3rd Defendant is Akwatte Dewamitta's pupil. After Parusala died Y. Seclaratana succeeded as Adhikari Bhikshu and remained so till he died in 1932.

T. Sumana had no pupils at Meda Pansala, but he had pupils at Meda- 40 godella near Rambukkana. I can't say how Sumana got that Vihare.

(At this stage I ask Counsel on both sides whether they have any objections to my taking the statement in Lawrie's Gazetteer as correct. Parties agree that Lawrie's Gazetteer is correct *re* Degaldoruwa and that I should read it).

Q. To your knowledge is there any Pansala at Malwatte College which is appurtenant to a distant Vihare?

A. No, but a Pansala in Malwatte can have appurtenances outside.

The Tibbotuwawa family had a Pansala in Malwatte. Its appurtenances are Ridi Vihare, Weligala Vihare, etc.

W. Saranankara's pupils have a Pansala at Malwatte. That Pansala has many appurtenant Pansalas.

Cross-examined by Mr. RAJARATNAM.

Nil.

No. 7.
1st and 2nd
Defendants'
Evidence.
Sri Dheerananda
Examination.
Continued.

Sri Dheerananda
Cross-
examination.

10 **Cross-examined** by Mr. SANSONI.

Meda Pansala is Sanghika property held by Sisyanu Sisya Tenure. I have not heard Meda Pansala called the Pansala of Moratota Unnanse. According to history the Meda Pansala belonged to the Moratota High Priest. I don't know if that monk was the Adhikari Bhikshu of Degaldoruwa Vihare. Moratota was a very famous monk. I don't know of what Vihare he was Adhikari Bhikshu.

20 There are three owners of the Kundasale Vihare but I don't know who the Adhikari Bhikshu is. I know of a Rambukwelle Anunayake. He was incumbent of Kundasale Vihare. I don't know that a monk of the same name is incumbent to-day. I knew the Rambukwelle I referred to. He is dead. He was the Anunayake of the Malwatte Chapter. There is a temple at Malwatte called Rambukwelle Pansala. He claimed to be Adhikari Bhikshu of that temple. That is his first Pansala. The Kundasale Vihare should be appurtenant to Rambukwelle Pansala at Malwatte.

At Kundasale there is a Pansala also. The Tibbotuwawe Pansala in Malwatte was built in the time of Kirti Sri when the Siamese Ordination was introduced from Siam. King Walagambahu built the 1st Ridi Vihare. That was earlier in date than the Tibbotuwawe Pansala, but Kirti Sri by another sannas re-dedicated them.

30 (To Court :

In the time of Kirti Sri owing to persecution, etc., Buddhism had fallen to a low ebb. That was the time of the re-dedication). The Mahanayake of Malwatte is not the incumbent of Gangarama Vihare. G. Sumana is the Adhikari Bhikshu of Lankatillake Vihare. He has a Pansala at Malwatte. Presently he is living at Lankatillake. The Malwatte Pansala has been used by his predecessors and a pupil of the pupillary line is in occupation. Sumana uses that Pansala when he comes to Kandy.

No. 7.
1st and 2nd
Defendants'
Evidence.
Sri Dheerananda
Cross-
examination.

(To Court :

Q. Is that Pansala an appurtenant of Lankatillake?

A. In my opinion having regard to history I think Lankatillake is appurtenant to the Malwatte Temple).

Some of the Pansalas at Malwatte are held in pupillary succession and others belong to the priesthood.

Sri Dheerananda
Re-examination.

Re-examined by Mr. PERERA.

Moratota was a Rajaguru or the King's tutor.

He was the tutor or Rajadi Rajasinghe.

(To Court :

10

The Mahanayake of Malwatte is Sri Saranankara Sumangala. To-day he has a toe swollen. He is now near the Maligawa waiting to give evidence. He can arrive in 5 minutes).

(Sgd.) R. F. DIAS,
D.J.

Goonaratana
Examination.

W. GOONARATANA UNNANSE, affirmed, 2nd Defendant, age 57, live at Meda Pansala in Malwatte Vihare.

I claim for myself and my co-pupils Meda Pansala as pupils of Parusala. The senior of us is 1st Defendant. We say all are entitled to maintenance and residence. We claim through pupillary succession through Parusala. 20 I say Parusala has possessed Meda Pansala for many years claiming as his.

(Mr. Perera says P3 of 1884, P1 of 1849 and P2 of 1849 all help his case).

I produce Deed 2862 of 1/6/58 (D4).

(Mr. SANSONI objects.

Copy of a copy.

Mr. Perera withdraws D4—need not be stamped). I produce Deed 4046 of 28/12/60—D5. Parusala here gives his address as Meda Pansala. I produce Deed 311 of 21/3/64—D6. Parusala leases to Ferdinando for purposes of a road. The road in D6 still exists. The road ran over a portion of Meda Pansala. I produce 142 of 28/2/1868—D7. In D6 and D7 Parusala gives 30 his address as Meda Pansala. D7 leases lands belonging to Menikcumbure Vihare.

I produce 7884 of 29/7/73—D8

„ 3985 of 15/3/75—D9

„ 3060 of 12/9/79—D10

all showing Meda Pansala. I produce Deed 5774 of 22/5/82—D11. I produce 6132 of 21/1/87—D12 by Parusala. I produce decree in favour of Parusala in District Court 948 in 1890—D13. He is there called Parusala of Meda Pansala. I produce Deed 6366 of 22/2/88—D14 and envelope of 20/12/1900—D15.

40

The address is to Meda Pansala.

I deny that Parusala ever possessed this Vihare with the leave and licence of anybody. Dewamitta (1) predeceased Parusala.

After Parusala's death we did not possess with anybody's leave and licence.

No. 7.
1st and 2nd
Defendants'
Evidence.
Goonaratana
Examination.
Continued.—

Cross-examined by Mr. SANSONI.

What is stated in P₁, P₂ and P₃ I accept. I don't know who the donors are. I don't know about Ratanapala (No. 1).

Goonaratana
Cross-
examination.

Meda Pansala is also called the Pansala of Moratota, because the King gave
10 it to Moratota.

Re-examined.

Nil.

(Sgd.) R. F. DIAS,
D.J.
3-12-35.

Mr. Perera puts in D₁ to D₁₅ and closes his case. Documents to be stamped and put in first for my study. List of documents to give the dates of documents. For 10th December. I will study them and then fix the case for argument.

20

(Sgd.) R. F. DIAS,
D.J.
3-12-35.

10-1-36.

Appearances as before.

In answer to the Court neither party has stated who the tutor of Parusala is. Mr. Perera states that Issues 7 and 8 make this unnecessary.

Mr. Perera address the Court. He cites

8 Times, page 107.

3 Ceylon Weekly Recorder 194.

30 Mr. Rajaratnam for 3rd and 4th Defendants addresses the Court.

Mr. Sansoni for the Plaintiffs addresses the Court.

In anticipation of Mr. Sansoni's argument Mr. Rajaratnam cites sections 99, 109 and 111 of Ordinance No. 9 of 1917 and urges that these have no application to religious trusts under the Buddhist Temporalities Ordinance.

No. 7.
1st and 2nd
Defendants'
Evidence.
Goonaratana
Cross-examina-
tion.—*Continued.*

He also cites,
2 Ceylon Law Weekly, page 134.
(This authority to be sent up to me).
He also cites,
28 New Law Reports, page 477.
Mr. SANSONI for the Plaintiffs addresses the Court.
Cites,
4 Halsbury, page 107.
23 New Law Reports, page 423.
30 New Law Reports, page 378. 10
Mr. A. PERERA in reply.
Judgment reserved for the 10th February, 1936.

(Sgd.) R. F. DIAS,
D.J.
10-1-36.

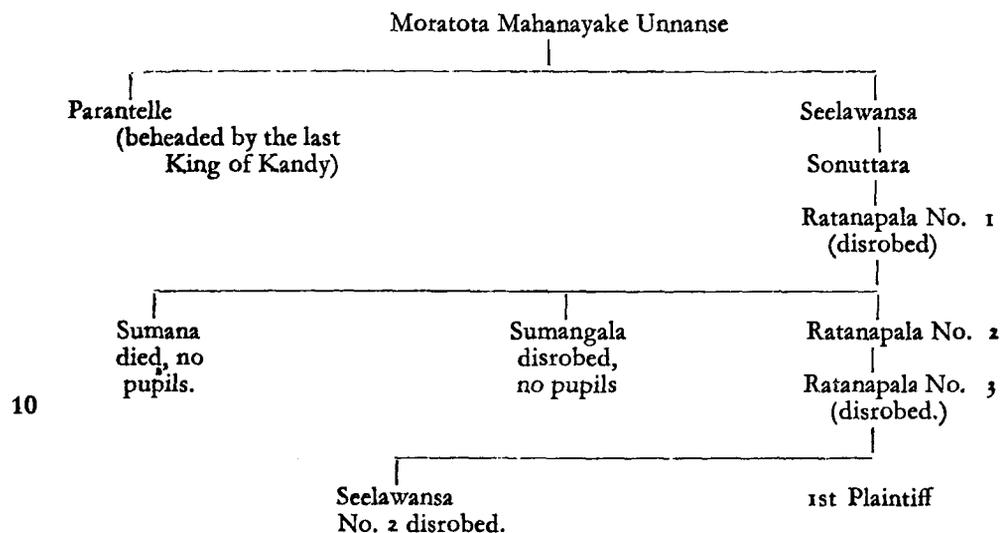
No. 8.
Judgment of the
District Court,
Kandy, 10-2-36.

No. 8.

Judgment of the District Court, Kandy.

The 1st Plaintiff is the Adhikari Bhikshu of the Degaldoruwa Vihare. The 2nd Plaintiff is the trustee. Admittedly, Plaintiff is the pupillary successor of a famous monk named Moratota Mahanayake Unnanse who was the Adhikari Bhikshu of the Degaldoruwa. The case for the Plaintiffs is that Moratota Mahanayake Unnanse being the Adhikari Bhikshu of Degaldoruwa Vihare "as such was entitled to the Meda Pansala situate at the Malwatte Pansala in Kandy with the right to occupy the same"—see para 3 of the plaint. It is alleged that the Defendants, who are the pupillary successors of one Parusala Unnanse, are in wrongful possession of Meda Pansala since 1932. The Plaintiffs, therefore, ask for a declaration that Meda Pansala be declared to be part and parcel of the endowments of Degaldoruwa Vihare and "as such" vested in the Plaintiffs. They also ask for possession and an order for the ejection of the Defendants. 30

Degaldoruwa Vihare is a famous temple. The parties have agreed that the reference given in 1 Lawrie's Gazetteer, pages 138-140, is a correct appreciation of the earlier history of this Vihare and that I should read it. The following pedigree will show the connexion between 1st Plaintiff and Moratota Mahanayaka Unnanse:—



No. 8.
Judgment of the
District Court,
Kandy, 10-2-36.
—Continued.

Lawrie says (Vol. 1, page 140) "Paranatala Ratanapala Unnanse was incumbent for many years (probably Ratanapala No.1 is referred to). This Paranatala Unnanse in 1849 granted the DEGALDORUWA Vihare to four priests—Sumana, Ratanapala, PARUSALA and Sumangala, and having leased the lands, he threw off his robes and became a layman.....Of the four grantees in the deed of 1849, Sumangala disrobed himself, Sumana died without leaving pupils.

- 20 Ratanapala died leaving a pupil. PARUSALA Unnanse as survivor of the grantees held the incumbency for some time.....In 1880 and for some years afterwards, there was a prolonged litigation (District Court, Kandy 81630, 90099) between PARUSALA Unnanse and the pupil of Ratanapala as to the right to the Vihare. Parusala Unnanse was not a pupil of Paranatala Unnanse and was not in the line of pupillary descent from the original incumbent Moratota, and it was decided that the grantor of the deed of 1849 had no right to divert the succession from the Sisyanu Sisya Paramparawa line specified in the SANNAS. The Vihare was in the end adjudged to belong to the young pupil of Ratanapala." One of the Supreme Court
- 30 Judgments delivered in the course of litigation above referred to is reported in 4 Supreme Court Circular 121, while the exhibits P4, P6, P7-P11 are extracts from the records of District Court, Kandy 81630 and 90099. It will thus be seen how Parusala on two occasions in 1879 and 1882 made attempts to claim DEGALDORUWA Vihare and was defeated. The present Defendants are the pupillary successors of Parusala. They make no claim to Degaldoruwa Vihare, but they are in possession of the Meda Pansala at Malwatte in the town of Kandy and they deny that it is an appurtenant of Degaldoruwa, or that these Plaintiffs have any right to claim it. The onus, therefore, is on the Plaintiffs to establish their title to
- 40 Meda Pansala—32 New Law Reports, 272.

No. 8.
 Judgment of the
 District Court,
 Kandy, 10-2-36.
 —Continued.

Plaintiffs admit that Degaldoruwa Vihare was created by a Sannas from the King. That Sannas is reproduced by Lawrie at page 138 in Volume 1 of his Gazetteer. That Sannas makes no reference to any Meda Pansala in the town of Kandy. The Degaldoruwa Vihare is situated some miles outside Kandy. Plaintiffs admit that Meda Pansala was granted by another King on an entirely different Sannas. That Sannas has not been produced, nor has any satisfactory explanation been given as to its non-production.

There is, however, both oral and documentary evidence which shows that the Meda Pansala was known as the "Meda Pansala of Moratota Mahanayake Unnanse." The exhibits P₁, P₂ and P₃ support this view, 10 particularly as Parusala is one of the grantees. Moreover, we have the admission of the 2nd Defendant himself when he says: "Meda Pansala is also called the Pansala of Moratota, because the King gave it to Moratota." On the balance of the evidence, I think I am justified in holding "that Meda Pansala was originally given to Moratota Mahanayake Unnanse, and that it would devolve on the pupillary successors of Moratota."

Having regard to the fact that there was this bitter and prolonged litigation between Parusala Unnanse on the one hand and one of Moratota's successors on the other in regard to Degaldoruwa Vihare, how comes it then that Moratota's Meda Pansala passed into the possession of Parusala and his 20 pupils? On this part of the case, I fear that Plaintiff's proof is untrue. I cannot believe, considering the bitter feelings that must have existed, that it was likely or probable that Meda Pansala would have been handed over during Plaintiff's minority to Akwatte Dewamitta Unnanse, who is a pupil of Parusala. On the facts before me, I feel compelled to hold that Parusala, having no right to Meda Pansala, took forcible possession of it and continued to remain in possession until his death, and that his pupils continued to possess thereafter right up to the present. I do not believe that up to 1932 they possessed with the leave and licence of the Plaintiff. The evidence clearly proves that everybody regarded Parusala and his pupils as the "big-people" 30 at Meda Pansala. If the story told by the Plaintiff is true, surely the High Priest of the Malwatte Chapter, who as Plaintiff's witness was in attendance and was waiting to be called, would have supported him.

I infer from the fact that he has not been called, that the High Priest's evidence, if called, would have proved adverse to the Plaintiff's case. Why did Plaintiff wait from 1932 until 1934 to file this action, if his story is true? Plaintiff's witness Ratanajothi Unnanse proves that Parusala lived in the Meda Pansala with his pupils and was regarded by everybody as being the chief person there. The witness Ukku Banda is not a witness of truth. Note how he glibly stated that Parusala died first and that Akwatte Dewamitta 40 died after Parusala until confronted with the exhibits D₂ and D₃ when he tried to hedge. I do not believe him.

The defence contends that whatever may be the legal title of the Plaintiffs to Meda Pansala, the Defendants have prescribed. Counsel puts the case

for the defence on the issue of prescription in two ways. In the first place, assuming that this is an action for a declaration that the 1st Plaintiff is the Adhikari Bhikshu of Meda Pansala, it is urged that the period of prescription is three years, and that Parusala and his pupils have prescribed—3 Ceylon Weekly Recorder 193, 28 New Law Reports 477. The latter case is one which has several points of similarity to the present case. In 28 New Law Reports 477 the action was brought by the alleged Adhikari Bhikshu and the trustee, as in the present case. Counsel in 28 New Law Reports 477 sought to distinguish the case reported in 3 Ceylon Weekly Recorder 193, but the Supreme Court held that in form and substance this was an action for a declaration of the Plaintiff's rights to the incumbency and that the cause of action was barred in three years. It appears from this case, that even although the pleadings may have been drafted as for a declaration of title, ejection, and possession, the Court could go behind the pleadings and ascertain what the cause of action really is. It also seems to me that this can be done even when the trustee has joined as a party.

No. 8.
Judgment of the
District Court,
Kandy, 10-2-36.
—Continued.

In the present case there are many exhibits put in by the defence which proves that for a great many years Parusala was in possession of the Meda Pansala. If the period of prescription is three years, as I think it is, Plaintiff would clearly be out of Court. In the second place, it is argued that even if the period is ten years, there is ample evidence before the Court to hold that for much more than ten years before this action was instituted Parusala had been in adverse possession. I agree with Counsel for the defence.

Counsel for the Plaintiff realising the situation, has advanced the argument that no amount of prescriptive possession will avail Parusala and those who claim through him in this case. He argues that the Meda Pansala is a "charitable trust" within the meaning of section 99 of the Trusts Ordinance No. 9 of 1917 and that even though Chapter X of that Ordinance may not apply to religious trusts regulated by the Buddhist Temporalities Ordinance by virtue of Section 109, nevertheless, this case is covered by Section III (c) and therefore, the Plaintiff's claim is not to be held barred or prejudiced by any provision of the Prescription Ordinance of 1871. To this the defence cites the decision of Akbar, J., in 12 Ceylon Law Recorder, page 208. "A reading of Ordinance 19 of 1931 shows that Buddhist Temples and Dewalas were placed in a class apart and were to be dealt with exclusively under that Ordinance.....All these points confirm me in my opinion that in spite of Section 109 of the Trusts Ordinance referring only to Chapter X, the whole Ordinance No. 9 of 1917 has no application to Temples and Dewalas for which special provision was made in Ordinance 19 of 1931." Counsel for the Plaintiff seeks to distinguish that decision by urging that Section 111 (c) would apply to rights which accrued before Section 34 of Ordinance No. 19 of 1931 became law.

If no prescriptive title will avail in a case of this kind it is curious that this point was not raised in 28 New Law Report 477. I think that the clue

No. 8.
Judgment of the
District Court,
Kandy, 10-2-36.
—Continued.

to the problem lies in the fact that we are not here face to face with a "trust" as understood by law and defined by Section 3 of Ordinance No. 9 of 1917. When a King or layman dedicates a land as a Pansala, although it is designated a "trust" it is not a "trust" of the kind contemplated either by equity or by our Trusts Ordinance.

In my opinion the reasoning of Akbar, J., applies to this case whether the cause of action arose before or after the passing of Ordinance No. 19 of 1931.

In my opinion this case is governed by 28 New Law Reports 477, and the cause of action of the Plaintiffs is prescribed in three years from the time it accrued. I do not think that Section 34 of Ordinance No. 19 of 1931 applies 10 to this case.

I answer the issues as follows:—

- 1 Yes
- 2 Yes
- 3 Yes
- 4 No
- 5 Yes
- 6 Yes
- 7 Yes
- 8 Yes
- 9, 10, 11—The decision of these issues has been held over.
- 12 No
- 8A Yes

20

I dismiss Plaintiff's action with costs.

(Sgd.) R. F. DIAS,
District Judge.
10-2-1936.

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

(Sgd.) R. F. DIAS,
District Judge. 30
10-2-1936.

No. 9.
Decree of the
District Court,
Kandy, 10-2-36.

No. 9.

Decree of the District Court, Kandy.

This action coming on for final disposal before R. F. Dias, Esquire, District Judge, Kandy, on the 10th day of February, 1936, in the presence of Mr. M. C. Sansoni, instructed by Mr. M. A. Vanderwall on the part of the Plaintiffs, and of Mr. A. Perera and Mr. Thalgodapitiya instructed by Mr.

L. B. Ratnayake for 1st and 2nd Defendants and of Mr. C. S. Rajaratnam instructed by Mr. V. M. Guruswamy on the part of the 3rd and 4th Defendants it is ordered and decreed that the Plaintiff's action be and the same is hereby dismissed with costs.

No. 9.
Decree of the
District Court,
Kandy, 10-2-36
—Continued.

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

The 10th day of February, 1936.

No. 10.

**Plaintiffs-Appellants' Petition of Appeal
to the Supreme Court.**

No. 10.
Plaintiffs-
Appellants'
Petition of
Appeal to the
Supreme Court
22-2-36.

10

IN THE DISTRICT COURT OF KANDY

1. PIYARATANA UNNANSE, and
2. AMUNUGAMA RATANAPALA THERO, both of Degal-
doruwa Vihare in Lower Dumbara.....*Plaintiffs.*

vs.

No. 45415.

S.C. (F) No. 76 of 1936.

1. WAHAREKE SONUTTARA UNNANSE,
2. WAHAREKE GUNARATANA UNNANSE,
- 20 3. AKWATTE DEWAMITTA UNNANSE, and
4. MADUGALLE SEELAWANSA UNNANSE, all of Mal-
watte Vihare in Kandy.....*Defendants.*

In the Supreme Court of the Island of Ceylon.

1. PIYARATANA UNNANSE, and
2. AMUNUGAMA RATANAPALA THERO, both of the Degal-
doruwa Vihare in Lower Dumbara.....*Petitioners.*

vs.

1. WAHAREKE SONUTTARA UNNANSE,
2. WAHAREKE GUNARATANA UNNANSE,
- 30 3. AKWATTE DEWAMITTA UNNANSE, and
4. MADUGALLE SEELAWANSA UNNANSE, all of Mal-
watte Vihare in Kandy.....*Respondents.*

No. 10.
 Plaintiffs-
 Appellants'
 Petition of
 Appeal to the
 Supreme Court,
 22-2-36—*Conti-
 nued.*

To :—

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

On this 22nd day of February, 1936.

The Petition of Appeal of the Plaintiffs-Appellants abovenamed appearing by their Proctor Michael Arnoldus Vanderwall sheweth as follows :—

1. This was an action for a declaration that the Meda Pansala in Malwatte Vihare in Kandy was part and parcel of the endowments of the Degaldoruwa Vihare and as such vested in the Plaintiffs-Appellants, the 1st Plaintiff being in the pupillary line of succession from Moratota Nayake Unnanse and the 10 2nd Plaintiff, the trustee for possession and ejection of the Defendants and damages.

2. The learned District Judge, by his Judgment dated the 10th February, 1936, while holding that the Meda Pansala was part of the endowments of the Degaldoruwa Vihare and that the Plaintiffs are the incumbents and trustees of the Vihare, dismissed their action on the ground, that their claim was barred by prescription. Aggrieved by the said Judgment the Plaintiffs beg to appeal therefrom to Your Lordships' Court on the following among other grounds, that will be urged by Counsel at the hearing of this appeal. 20

1. The said Judgment is contrary to law and against the weight of evidence.

2. The basis of fact, on which the learned District Judge found his conclusion is, that Parusala to whom the Defendants trace title took forcible possession of Meda Pansala many years ago. It is respectfully submitted, that there is no evidence of such an ouster, that it was not the Defendant's case, that there was one ; that the litigation, referred to by the learned Judge, shows that, it was very unlikely that the rightful holders would have submitted to it.

3. The learned District Judge has viewed the evidence from a wrong 30 point of view and has lost sight of several matters which have an important bearing on the character of Defendant's possession. Meda Pansala was not a separate and independent entity. It was, as the learned Judge has found, an accessory of a property, which is in Plaintiffs' possession, one in a distant place and one in which the Plaintiffs could not be expected to reside. Its occupants would ordinarily be other priests having some connection with the Vihare. Parusala though not in the line of succession, was connected collaterally with the incumbent of Degaldoruwa Vihare and a Buddhist priest cannot be ejected except for some personal cause.

4. It is respectfully submitted, that the learned District Judge has been led to hold, that the Defendants' possession was always adverse, by his disbelief of the Plaintiffs' account of its origin. In this he was wrong. The presumption arising from Plaintiffs' title has been strengthened not only by the circumstances set out in the preceding paragraph but also by the fact, that both the old cases referred to in the proceedings were not only for the Vihare but also its endowments and the burden of proof was heavily on the Defendants.

No. 10.
Plaintiffs-
Appellant's
Petition of
Appeal to the
Supreme Court
22-2-36—Conti-
nued.

5. The learned District Judge was wrong in law in holding that the action is one of the character of *Terunnanse vs. Terunnanse* (28 New Law Reports 477). The 1st Plaintiff did not seek a declaration that he was incumbent of Meda Pansala as if it were a separate entity, but that, as incumbent and trustee of Degaldoruwa Vihare, they were entitled to the possession and control of Meda Pansala which was really one of the Pansalas of the Vihare and in a sense, part of the Vihare.

6. Even if the action had been of the character referred to, it is submitted, that for various reasons not considered in the said case of *Terunnanse vs. Terunnanse* the action is not barred and no prescription has run against the Plaintiffs' claim. The case is one, to which the dicta of Bertram, C. J., at page 424 in 23 New Law Reports applies. It is respectfully submitted that the learned District Judge has misapprehended the effect of Akbar, J., dictum in *Ratwatta vs. The Public Trustee*, 12 Ceylon Law Recorder 208, which, however, is purely obiter. Ordinance No. 19 of 1931 can render the earlier Ordinance No. 9 of 1917 inapplicable to Buddhist Temples, only by way of implied repeal and that, it is respectfully submitted, is an impossible contention, so far as the question of prescription is concerned.

Wherefore the Plaintiffs-Appellants pray that the said Judgment may be set aside and that Judgment may be entered for Plaintiffs on the issues tried with costs and that the case may be sent back for the trial of the issues remaining to be decided.

(Sgd.) M. A. VANDERWALL,
Proctor for Plaintiffs-Appellants.

No. 11.

Decree and Judgment of the Supreme Court.

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

No. 11.
Decree and
Judgment of the
Supreme Court
29-6-37.

D.C. (F) No. 76L/1936.

40 IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

1. PIYARATANA UNNANSE, and

No. 11.
Decree and
Judgment of the
Supreme Court
29-6-37—Conti-
nued.

2. AMUNUGAMA RATANAPALA THERO, both of the
Degaldoruwa Vihare in Lower Dumbara.....*Plaintiff-Appellants.*

against

1. WAHAREKE SONUTTARA UNNANSE,
2. WAHAREKE GUNARATANA UNNANSE,
3. AKWATTE DEWAMITTA UNNANSE, and
4. MADUGALLE SEELAWANSA UNNANSE, all of
Malwatte Vihare in Kandy.....*Defendants-Respondents.*

Action No 45415.

District Court of Kandy.

10

This cause coming on for hearing and determination on the 25th day of June, 1937, and on this day upon an appeal preferred by the Plaintiff before the Hon. Mr. K. E. Poyser, K.C., Senior Puisne Justice and the Hon. Mr. V. M. Fernando, Acting Puisne Justice of this Court, in the presence of Counsel for the Appellants and the 3rd and 4th Respondents.

It is considered and adjudged that the Decree made in this action by the District Court of Kandy and dated the 10th day of February, 1936, be and the same is hereby set aside, and the case is sent back to the said District Court for trial on the Issues 9, 10 and 11.

It is further ordered and directed that it will be open to the parties if they 20 so desire to raise the question whether the Defendants are in law entitled to claim compensation and any issue necessary for the purpose may also be raised at the trial.

And it is further ordered and decreed that the Defendants-Respondents do pay to the Plaintiffs-Appellants their taxed costs of this appeal and that the costs of this action in the said District Court do abide the final decision of the action.

Witness the Hon. Sir Sidney Solomon Abrahams, Kt., Chief Justice at Colombo, the 29th day of June in the year of our Lord One Thousand Nine Hundred and Thirty-seven and of Our Reign the First. 30

(Sgd.) GUY O. GRENIER,
Registrar, S.C.

The following is the Judgment of the Supreme Court, on the same date pronounced by the Court:—

D. C. Kandy 45415.

76.

Present: POYSER, J., and FERNANDO, A. J.

Counsel: HAYLEY, K. C., and WICKREMANAYAKE for Plaintiffs-Appellants.

H. V. PERERA, K.C., N. E. WEERASOORIYA, H. E. AMARASINGHE
and A. E. R. COREA for 3rd and 4th Defendants-Respondents.

Argued: 25th June, 1937.

Delivered on: 29th June, 1937.

FERNANDO, A. J.

No. 11.
Decree and
Judgment of the
Supreme Court
29-6-37—*Continued*.

The 1st Plaintiff-Appellant is the incumbent of Degaldoruwa Vihare and the 2nd Plaintiff is the trustee of that Vihare and they filed this action against the four Defendants to have it declared that the land and building referred to as Meda Pansala situated in the premises of the Malwatte Vihare in Kandy be declared to be a part of the endowments of the Degaldoruwa Vihare and as such vested in the 1st Plaintiff as incumbent and in the 2nd Plaintiff as trustee and that the 1st Plaintiff be declared entitled to the possession thereof. The Plaintiffs also claim damages and that the Defendants be ejected from the Pansala.

At the trial it was admitted that the 1st Plaintiff was the Adhikari Bhikshu or incumbent of Degaldoruwa Vihare and the 1st and 2nd Issues framed were : (1) Was Meda Pansala an appurtenant of Degaldoruwa Vihare? (2) Was Moratota Mahanayake Unnanse the Adhikari Bhikshu of the Degaldoruwa Vihare and as such entitled to Meda Pansala? The learned District Judge held on the 1st and 2nd Issues in the affirmative, that is to say, he held that Meda Pansala was an appurtenant of Degaldoruwa Vihare and that Moratota as incumbent of the Vihare was entitled to the Meda Pansala. He held, however, on the Issue 6 that the Plaintiffs' action was prescribed in three years from the time the cause of action accrued to the Plaintiffs and that Parusala had been in possession of the Meda Pansala for a long period according to the evidence from about 1887.

It was proved in the course of the trial that Parusala had prolonged litigation with one Pilawala Dhammasiddhi Unnanse who claimed to be the successor to Paranatala Ratanapala Unnanse with regard to the incumbency of Degaldoruwa Vihare. Parusala claiming on the strength of the deed of transfer by the previous incumbent in his favour. It was held, however, that an incumbent for the time being had no right to divert the succession from his own pupils and that the incumbency of the Vihare had come to the pupil successors and that the deed was, therefore, of no effect. The claim made by Parusala in that action was to the possession of the Vihare and of the endowments thereof (See District Court, Kandy, 81630, dated 27th March, 1878). In 1882 there was another action District Court 90099 and Parusala who was the Plaintiff in that action as well still claimed to be the incumbent of Degaldoruwa Vihare and its endowments and there too his action was dismissed with costs and it was declared that the 3rd Defendant in the action, Amunugama Ratanapala Unnanse, was entitled to the incumbency and it was ordered that he be quieted in the possession of the Vihare and its endowments. From these facts and from the finding of the learned District Judge that Meda Pansala was an appurtenant of Degaldoruwa Vihare,

it would follow that the rightful incumbent for the time being of Degaldoruwa Vihare would be entitled to the Meda Pansala, and the learned District Judge so found on Issue 2.

Issue 7, however, suggests that Parusala was the Adhikari Bhikshu or incumbent of Meda Pansala and it was contended by Counsel for the Respondent that Meda Pansala was a separate temple within the meaning of Buddhist Temporalities Ordinance and that Parusala was the incumbent of the Meda Pansala. It will be noticed from Deed P₁ of the 7th of May, 1849, that Paranatala Ratanapala the grantor described himself as residing at Malwatte Vihare and as the incumbent of Degaldoruwa Vihare and that he purported to grant Degaldoruwa Vihare and the lands, houses and gardens appertaining to it to four persons including Parusala. That deed is of importance in as much as it refers to the Meda Pansala and calls it the Pansala which belonged to the Moratota Unnanse of Malwatte Vihare and provides that the four donees on P₁ shall improve that Pansala and that any necessary work might be done through the tenants of Degaldoruwa Vihare showing that the Meda Pansala was regarded as an appurtenance of the Vihare. But P₁ is also important as showing that the donor although residing at Malwatte Vihare described himself as incumbent of Degaldoruwa. In P₂ and P₃, the Pansala is described as belonging to Moratota, priest of Malwatte Vihare. In D₅ of 1860 Parusala described himself as of the Meda Pansala and Chief Priest of Degaldoruwa Vihare and the same description appear in D₇ of 1868. In 1873, Parusala executed lease D₈ for certain lands which he says belonged to Degaldoruwa Vihare and it seems obvious that he was dealing with the lands as incumbent of that Vihare although he describes himself as resident in Meda Pansala in Malwatte in Kandy.

Deeds D₉, D₁₀, D₁₁, D₁₂ and D₁₄ were all executed by Parusala, but not in one of these deeds does he describe himself as incumbent of the Meda Pansala. The witness Sri Deerananda, who gave evidence for the Defendant, stated that he was the Secretary of the Chapter known as the Malwatte College. His evidence is of some use, in as much as he defines what is a Vihare. The word Vihare, he says, means a monastic establishment. A Vihare has also a Buduge. There is also a Poyage and a Dagaba containing relics. Within the Vihare, there is also a Pansala. In the Pansala lives the Adhikari Bhikshu and others in the pupillary succession. The Pansala itself is also called a Legoonce and is the place where the priests live. Malwatte Vihare comprises everything at Malwatte and is the Malwatte College. It contains 12 or 14 Pansalas. Some of these Pansalas are held in pupillary succession. The others are under the control of the Chapter. The Malwatte Vihare itself has a Poyage and a Buduge. There is also a Dagaba and a Sacred Bo-tree. He then for the first time brought in the suggestion that Parusala was the Adhikari Bhikshu of Meda Pansala. In cross-examination he stated that Moratota was a famous monk, but that he did not know of what Vihare he was Adhikari Bhikshu. He said that Rambukwelle Anunayake was incumbent of Kundasale Vihare that he was the Anunayake of Malwatte Chapter and that there was a temple at Malwatte called Rambuk-

welle Pansala. He then added that the Kundasale Vihare should be appurtenant to the Rambukwelle Pansala at Malwatte. "Sumana is the Adhikari Bhikshu of Lankatilleke Vihare. He has a Pansala at Malwatte. The Malwatte Pansala had been used by his predecessors and a pupil of the pupillary line is in occupation, Sumana uses that Pansala when he comes to Kandy." He was then asked if that Pansala was an appurtenant of Lankatilleke Vihare and his answer was "I think Lankatilleke is appurtenant to the Malwatte Temple." "Some of the Pansalas at Malwatte," he continued, "are held in pupillary succession and the other belong to the priesthood."

No. 11.
Decree and
Judgment of the
Supreme Court
29-6-37—Conti
med.

- 10 On this evidence it seems clear to me that the witness's statement that Parusala was Adhikari Bhikshu of Meda Pansala was clearly false, that the Meda Pansala was an appurtenant of Degaldoruwa Vihare and that Parusala first came to live there when he was claiming to be the incumbent of Degaldoruwa on the strength of the Deed P1 in favour of himself and three others. Apparently there are Pansalas in the premises of the Malwatte Vihare which are appurtenant to other Vihares and the incumbent of each such Vihare manages the Pansala in Kandy which he occupies whenever he visits Kandy. When Moratota was made Anunayake of Malwatte Vihare, it apparently became necessary for him to stay at Kandy whenever he came there on
20 business and the Pansala in question appears to have been given to Moratota for that purpose. He, however, and his successors as incumbents of Degaldoruwa Vihare occupied it in that capacity, and in the result the learned District Judge was right when he held that the Meda Pansala was an appurtenant of the Degaldoruwa Vihare.

- The only other important question is that of prescription. The learned District Judge held that if the action regarded as one for a declaration that 1st Plaintiff is the Adhikari Bhikshu of Meda Pansala, that claim would be prescribed in three years, but that is not the nature of the present action. This is an action in which the Plaintiffs' claim that the Meda Pansala is an
30 appurtenant to the Degaldoruwa Vihare, that the title to the Pansala in dispute vests in the trustee of the Vihare and that the 1st Plaintiff is entitled to the possession of it. The question would, therefore, arise whether it is possible for any person to acquire title to the Meda Pansala by prescription and, if so, whether the Defendants have in fact been in possession for such a period and under such circumstances as to enable them to acquire a title thereto by prescription. The learned District Judge has not discussed the evidence of possession led for the Plaintiff. The 1st Plaintiff himself stated that when he went to Kandy he went to the Meda Pansala and had his meals there, and he also sent the tenants of Degaldoruwa to repair the Meda Pansala when
40 necessary.

The witness Ratanajothi Unnanse corroborated the Plaintiff when he said he had seen the Plaintiff at the Meda Pansala during the last 40 years. He also corroborated the Plaintiff's evidence when he said that he himself had a Pansala at Malwatte which he visits about 15 times a month. The 2nd Defendant who gave evidence did not state anything to the contrary and I see no reason to disbelieve the evidence of the 1st Plaintiff when he says that

No. 11.
Decree and
Judgment of the
Supreme Court
29-6-37—Conti-
nued.

on his visits to Kandy he did reside at the Meda Pansala and that repairs to that Pansala was effected by him through the tenants of Degaldoruwa. It is true that Parusala and his pupils lived for a number of years at Meda Pansala, but Parusala's claim to the incumbency of Degaldoruwa Vihare was decided against him in 1887 and any acts of possession prior to 1887 cannot avail him or his pupils in this action. Since then the Plaintiff and his predecessors in Office must be taken to be entitled to the possession of the Meda Pansala. At the same time a Pansala is intended for the residence of priests and the right to reside in a Pansala vests not only in the incumbent of the Vihare but in the whole body of priests or the Sangha, to whom the Pansala is dedicated. 10
The fact that Parusala or any of his pupils resided in the Meda Pansala at a time when the use of that particular portion of the building was not required by the incumbent of Degaldoruwa Vihare amounts to nothing more than that they lived there under his control and with his permission. I do not think the incumbent of a Vihare is entitled to eject any priest from the Pansala belonging to that Vihare unless, of course, for some specific reason, or perhaps because he disputed the right of the incumbent. In such circumstances possession by the pupils of Parusala cannot be regarded as adverse possession so as to enable such pupils to acquire a title by prescription.

I do not think it necessary in this case to go into the question whether 20
a Pansala as an appurtenance of a Vihare is property that is capable of being acquired by prescription. On the evidence I would hold that the Plaintiff and his predecessors in Office have exercised the right of occupation which they had and that the Defendants and their predecessors have not acquired a title by prescription.

Issues 9, 10 and 11 also raise the question whether the Defendants are entitled to compensation for improvements effected by them and whether they are entitled to a *jus retentionis* till such compensation is paid. The record shows that it was agreed that the question *re* the value of the improvements was to be decided after the issues of fact had been decided and the learned 30
District Judge did not decide these issues in view of the finding that the Defendants have acquired a title by prescription. I would accordingly set aside the decree of the District Court and send the case back for trial on these Issues 9, 10 and 11. It will, however, be open to the parties if they so desire to raise the question whether the Defendants are in law entitled to claim compensation and any issues necessary for that purpose may also be raised at the trial. The Defendants-Respondents will pay to the Plaintiffs-Appellants their costs of this appeal and the costs of the action in the District Court will abide the final decision of the action.

(Sgd.) V. M. FERNANDO, 40
Acting Puisne Justice.

I agree.

(Sgd.) K. E. POYSER,
Senior Puisne Justice.

Further Proceedings.

30-8-37.

Mr. M. A. VANDERWALL for Plaintiff instructing Mr. SANSONI.
Mr. RATNAYAKE for 1st and 2nd Defendants instructing Mr.
THALGODAPITIYA and Mr. A. PERERA.

Mr. GURUSWAMY for 3rd and 4th Defendants.

Issues 9, 10 and 11 have to be still decided.

Mr. PERERA suggests,

- 10 Of consent issue commission at joint expense to Mr. Spaar to show the Meda Pansala as claimed by Plaintiff and to report fully on the alleged improvements and buildings claimed to have been put up by Defendants and their predecessors showing the age, value and cost of building and the like with special reference to the oldest building and Meda Pansala premises. Commission to be executed in the presence of both parties after notice. Take off Trial Roll and call for receipts on 21/9. Defendants to issue commission.

(Sgd.) R. F. DIAS,

D.J.

30-8-37.

20 7-6-38.

Mr. VAN REYK with Mr. M. A. VANDERWALL for Plaintiff.

Mr. A. PERERA with Mr. A. FERNANDO for party noticed, who is not a party to these proceedings.

Mr. GURUSWAMY for 3rd and 4th Defendants.

Mr. RATNAYAKE for 1st and 2nd Defendants,

absent.

The Supreme Court has given certain directions and this Court has to try the issues indicated in the Supreme Court Judgment, *re* the improvements to the Meda Pansala.

- 30] Thereafter Mr. Spaar was commissioned to value the improvements. Mr. Spaar reported that he could not execute the commission till a survey of Meda Pansala was made. The Court then issued such a commission. Whereupon Rev. B. Dewamitta, the party noticed, complained that Mr. Spencer was trying to survey something outside the Meda Pansala. I inform parties that I am here to carry out the order of the Supreme Court and that commissions and plans are only relevant in an indirect sense. The parties must lead the necessary evidence to enable me to decide the issues. Mr. A. Perera then

No. 12.
Further Proceedings—Continued.

says that this being so he has no objection to the Commissioner proceeding with the survey without prejudice to all the rights of the party noticed.

The Commissioner will, of course, show on his plan what the party noticed says is not the Meda Pansala. I do not propose to take any further action in these circumstances against the party noticed.

Mr. Van Reyk raises the question of costs.

I think the best order is to hold that the Plaintiff must re-issue the commission.

Question of costs to abide the final decision.

(Sgd.) R. F. DIAS, 10
D.J.
7/6.

22-3-39.

It is agreed that the Court will have to define what the Meda Pansala is and an issue will have to be framed.

As I have a heavy part-heard criminal case, which will take the rest of the day, trial is postponed for 2/6.

(Sgd.) M. W. H. de SILVA,
D.J.

2-6-39.

20

Mr. VAN REYK and Mr. N. GRATIAEN, instructed by Mr. VANDERWALL for the Plaintiffs.

Mr. A. PERERA and Mr. J. E. M. OBEYESEKERE, instructed by Mr. L. B. RATNAYAKE and instructed by Mr. V. GURUSWAMY for the 1st and 2nd Defendants and 3rd and 4th Defendants respectively.

After hearing Counsel for both sides, it seems to be most convenient to hear arguments on Issue 11 which relates to the question whether the Plaintiffs are liable to pay Defendants the cost of any improvements effected by them by erecting buildings and, if so, whether they are entitled to a *jus retentionis*.

As I find from the record of the proceedings in this Court on the 22/3/39 30 it was agreed between the parties that the Court will have to define what the Meda Pansala is and that an issue will have to be framed to determine the identity of the Meda Pansala.

Mr. Obeyesekere for Defendants draws my attention to the report of Mr. Spencer, the surveyor commissioned by this Court, to make a plan of the Meda Pansala from whose report it would appear that some of the buildings which are claimed by Plaintiffs to comprise the Meda Pansala are adversely claimed by other priests who are not parties to these proceedings on certain independent rights.

I shall make a further order with regard to the framing of further issues arising on the disputes between the parties as to the identity of the buildings comprising the Meda Pansala after adjudicating on Issue No. 11. No. 12.
Further Proceedings—Continued.

Mr. Gratiaen addresses the Court.

He cites :—

7 Ceylon Law Recorder 117.

24 New Law Reports 36.

28 New Law Reports 140.

Mr. J. E. M. Obeyesekere addresses the Court.

10 13 Ceylon Law Weekly 136.

23 New Law Reports 24.

29 New Law Reports 361 at 366.

5 Supreme Court Circular 61.

At this stage Mr. Obeyesekere for the Defendants proposes to lead evidence with regard to the improvements effected on lot 2 as shown on Mr. Spencer's plan dated 16/7/38. He also states that in view of the position taken up by the Plaintiff that Meda Pansala comprises the buildings indicated by lots 1, 2, 3, 4, 5 and 6. It will be necessary for the Court at this stage to frame an issue as agreed to between the parties on 22/3/39 for the purpose of defining
20 the corpus of the buildings which comprise the Meda Pansala. Counsel for the Defendants also state that if the Court holds that the Meda Pansala comprises the various buildings as pointed out by the Plaintiff, that his clients have a claim for compensation in respect of lots 1, 4 and 5 which are claimed by them by certain rights independent of the rights which were put forward by them at the trial in respect of lot 2 which was the only lot in the contemplation of the Defendants when they filed answer.

In view of this position which has been taken up by the Defendants it seems to me that it is essential that the Court should first of all determine what buildings comprise the buildings of the Meda Pansala. In view of the absence
30 of a plan or a description of the Meda Pansala by metres and bounds in the plaint filed, I find it difficult to say that the Defendants are not entitled to put forward the claim for compensation as now put forward by them. I therefore frame the following additional issue which is numbered :—

13. Do the buildings marked 1, 2, 3, 4, 5 and 6 and the land shown in the inset edged green, in Mr. Spencer's plan, represent the Meda Pansala which is the subject-matter of this action? Mr. Gratiaen also states that the buildings 7, 8, 9 and 10 are also buildings belonging to the Meda Pansala, but that he does not ask for any relief as the rights of parties, who are not parties to the action, are involved.

40 I indicate to the parties that it will be most convenient if evidence is first led on Issue 13 as now framed.

No. 15.

Spaar's Valuation Report and Plan.

13th September, 1938.

District Court Case No. 45415.

Sir,

I inspected the buildings situated at Malwatte in the presence of the Plaintiff and the Defendants.

In the plan prepared by Mr. Spencer, he has shewn the buildings, numbered 1 to 6, claimed by the Plaintiffs as constituting the Meda Pansala.

The Defendants, on the other hand, state that only the building marked 2 on the plan is the Meda Pansala. They make no claims to the other buildings which are claimed by priests who are not Defendants in this action.

It would, therefore, appear that the Plaintiffs' claim against the Defendants is confined to building No. 2 only.

Buildings 1 to 6 have been, more or less, improved, modernised or rebuilt from time to time and it is not therefore possible to state with any degree of certainty which of the buildings is the oldest on the premises.

As both the Plaintiffs and the Defendants are on common ground re building No. 2, I have confined my measurements and valuation to this building and submit my valuation on it. 20

I should like to suggest that the Court inspects these buildings when I shall be present and give any assistance I am able to in arriving at a decision in the matter.

From observations and excavations made, a part of building No. 3 appears definitely to have been built later than No. 2.

I annex a detailed plan of building No. 2.

I am, Sir,
Your Obedient Servant,
(Sgd.) A. MORLEY SPAAR.

The District Judge,
Kandy.

30

**Valuation Report of Building No. 2 shown in Plan,
prepared by Mr. Spencer in District Court, Kandy, Case No. 45415.**

	Rs.	Cts.
1. 22.10 cubes excavation in foundation and in filling to floor level @ 1/-	...	22 10
2. 33.39 cubes random rubble masonry in foundations @ 15/- per cube	...	500 85
3. 6.82 cubes masonry in lime mortar built from ground to floor line @ 20/- per cube	136 40



chains 10 5 0 5 10 chains
 Scale of 4 Chains to an Inch

PLAN
 OF AN ALLOTMENT OF LAND
 The Property of Malwatte Vihare.
 situated in
KANDY
 in
 GANGA-WATE PALATE
 of the District of
YATTINUWERA
CENTRAL PROVINCE

Bounded on the North-East, North & North West by the Lake Road
 -----"----- East by the Lake Road & by Lands said to belong to General Frazer
 and D Kershaw Esquire
 -----"----- South-West & South by Lands said to belong to D Kershaw Esquire
 and Mr. C. L. Ferdinands
 -----"----- West by Land said to belong to the Crown and by a Road.

CONTAINING IN EXTENT A . R . P
 S. 3 24
 Exclusive of the Road passing thro' the lands and
 of Lot A of the Palata Maligawa

DRAWN by W. de Abren
 WRITTEN by Cha. Van R.
 EXAMD by R. A. F.
 REYD^d
 FEES pd

Surveyed by Mr Asst. Surveyor W. R. Noad.

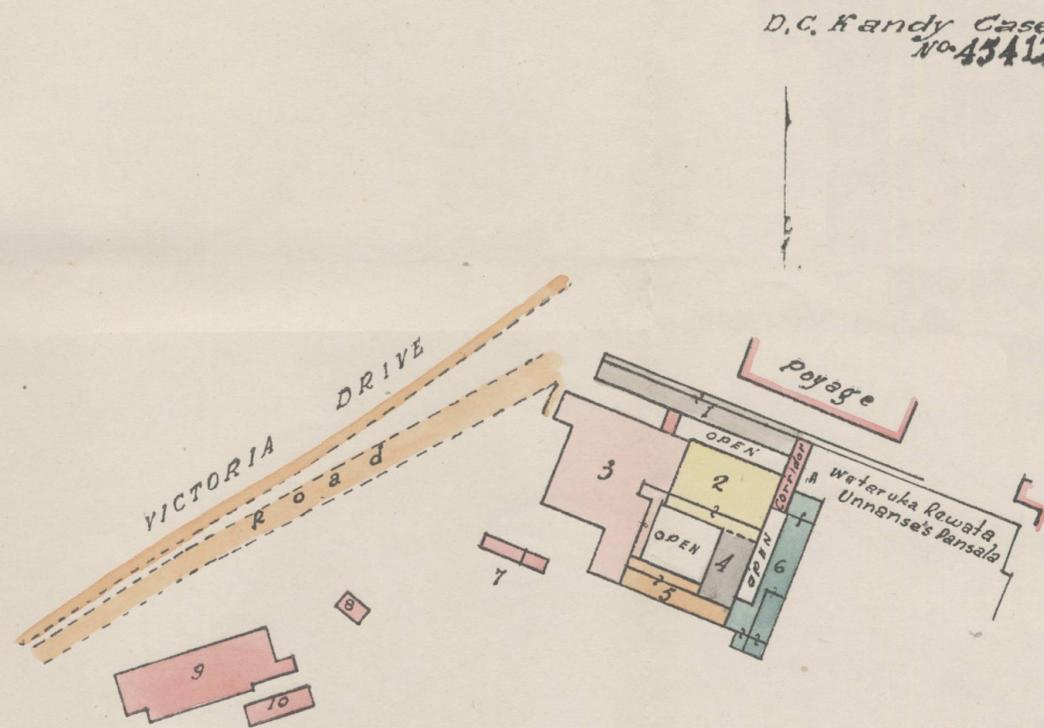
Surveyor General's Office,
 Colombo, 27th February 1863
 (Sgd) Cha Lim.
 Surveyor General

Surveyor General's Office,
 Colombo, 5th June 1917
 "True Copy" (Sgd) A. H. G. Dawson.
 for Surveyor General

Copied by H. P. D. S.

Furnished at the request of Mr. O. V. Bartholomew.
 Fee Rs 3/50

No. 13 SPENCER'S PLAN.
16. 7. 38.



Scale of 1 chain to an inch.

PLAN

of
The Buildings standing on the land belonging
to the Meda Pansala as pointed out by the Plaintiffs & Defendants.

situated at

Malwatta Vihare.

KANDY.

Plaintiffs state buildings 1 to 6 are the Meda Pansala, & 7, 8, 9, & 10 are built on the premises of the Meda Pansala & belong to it. They claim the buildings 1 to 10 & the land sketched by me in inset & edged green.

Defendants state building 2 is the Meda Pansala, for which they claim compensation, and no ground attached to it. That the ground on which these various Pansalas stand belong in common to all the High Priests. That building 1 belongs to Parusala Nayaka Unnanse & it is built on the ground belonging to the Poyage, building 3 belongs to Ginigathpitiye Nayaka Unnanse, building 4 was built by Parusala Nayaka Unnanse & belongs to him, building 5 belongs to Mahalle Nayaka Unnanse, and building 6 to Kaballawita Nayaka Unnanse

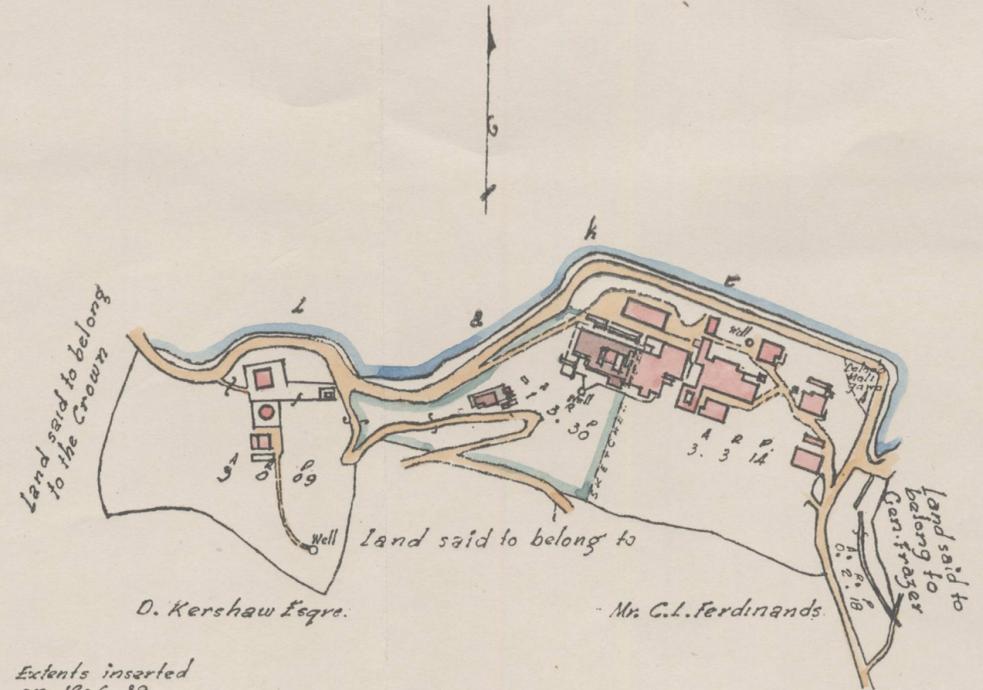
Surveyed buildings 1 to 7 on 20th Februry 1938.
& 8, 9 and 10 " 16th July 1938.

by P. Spencer

Surveyor and Leveller.

Building 6 was claimed by H. Rewata Unnanse on 16. 7. 38.
" 3, 8, 9, & 10 were claimed by B. Dewamitta Unnanse on 16. 7. 38.

INSET.



Extents inserted on 12. 6. 39.

by P. Spencer

Scale of 4 chains to an inch.

The Property of Malwatta Vihare as per T.P. No 58, 891, showing the buildings as surveyed by me. (Black lines) & the land pointed out by Plaintiff, coloured green (sketched)
Extent 8. 5. 3A. Exclusive of the Road passing thro' the land & lot A of the Dalada Maligawa. As per T.P. No. 58, 891. (Red lines)

	Rs.	Cts.	No. 15. Spaar's Valua- tion Report and Plan, 13th Sep- tember, 1938— <i>Continued.</i>
4. 16.19 cubes random rubble masonry in lime mortar in walls @ 18/-	...	291	42
5. 29.12 sqs. lime plastering and whitewashing walls @ 4/-	...	116	48
6. 7 Nos. verandah posts @ 12/50	...	87	50
7. 39½ L. ft. railing in verandah 3' high @ 1/- per L. ft.	...	39	75
8. 111 cub. ft. wood work in cross beams and purlins @ 2/- per cube. ft.	...	222	00
9. 2.72 cubes brick masonry in lime mortar @ 32/50 per cube	...	88	40
10. 3.06 sqs. loft in rooms in planks 2½" thick @ 1/-	...	306	00
11. 18.75 sqs. roofing covered with Kandyan tiles @ 35/- per sqr.	...	656	25
12. 1 No. door frame only 6' X 3'	...	5	00
10 13. 15 sqr. ft. batten door with frame @ -/40	...	6	00
14. 6¾ sqr. ft. glazed window and batten shutters @ -/70 per sqr. ft.	...	4	66
15. 19 sqr. ft. Kandyan type windows @ 1/50	...	28	50
16. 22 sqr. ft. Kandyan door frame with shutters 1½" thick @ 1/75	...	38	50
17. 48 sqr. ft. Kandyan door frame with shutters 2" thick at 3/25	...	156	00
18. 45 sqr. ft. Kandyan door frame with Kandyan and panel and glazed shutters @ 5/- per sqr. ft.	...	225	00
19. 45 sqr. ft. Kandyan door frame and shutters 1½" thick @ 3/-	...	135	00
20. 30 sqr. ft. Kandyan door frame and shutters 1½" thick @ 2/75	...	82	50
	Rs.	...3,148	31

20 Say Rs. 3,000/-.

(Sgd.) A. MORLEY SPAAR.

Kandy,
13th September, 1938.

No. 16.

Siddhartha Thero's Letter.

No. 16.
Siddhartha
Thero's Letter—
13th September,
1940.

Rattepitiye Vihare,
Manikdiwela,
Kadugannawa,
13th September, 1940.

District Court, Kandy, Case No. 45415.

Sir,

30

With reference to the above case which is now pending in the District Court of Kandy, I beg to bring to the notice of the Court that I am entitled to four rooms towards the west out of buildings marked No. 1 in plan made by Mr. H. Spencer, Surveyor, dated 20th February, 1938, and filed of record in the above case on the title shown below.

One Hulawa Bodhisihā Anunayake was the owner of these four rooms as far back as 1850 A. D., after his demise his sacerdotal pupil Weliwita

No. 16.
Siddhartha Thero's Letter—
13th September,
1940—Continued.

Ratanapala became entitled to the four rooms and on his death I succeeded and became entitled to the said four rooms as Senior pupil.

I wish to state that I am in possession of these four rooms out of building No. 1 and that neither the Plaintiffs nor the Defendants have any rights to the said four rooms.

I beg that this petition be filed in the above case in the event of the necessity arising for me to vindicate my title to the said rooms.

I beg to remain,
Your obedient servant,
(Sgd.) R. D. B. SIDDHARTHA. 10

The District Judge,
Kandy.
Doranegama Siddhartha Thero.

No. 17.

Spencer's Report

No. 17.
Spencer's
Report—28th
August, 1940.

82, Castle Hill Street,
Kandy, 28th August, 1940.

District Court, Kandy, Case No. 45415.

Sir,

As ordered I have the honour to submit that the areas of Lots 1 to 10 20 are as follows:—

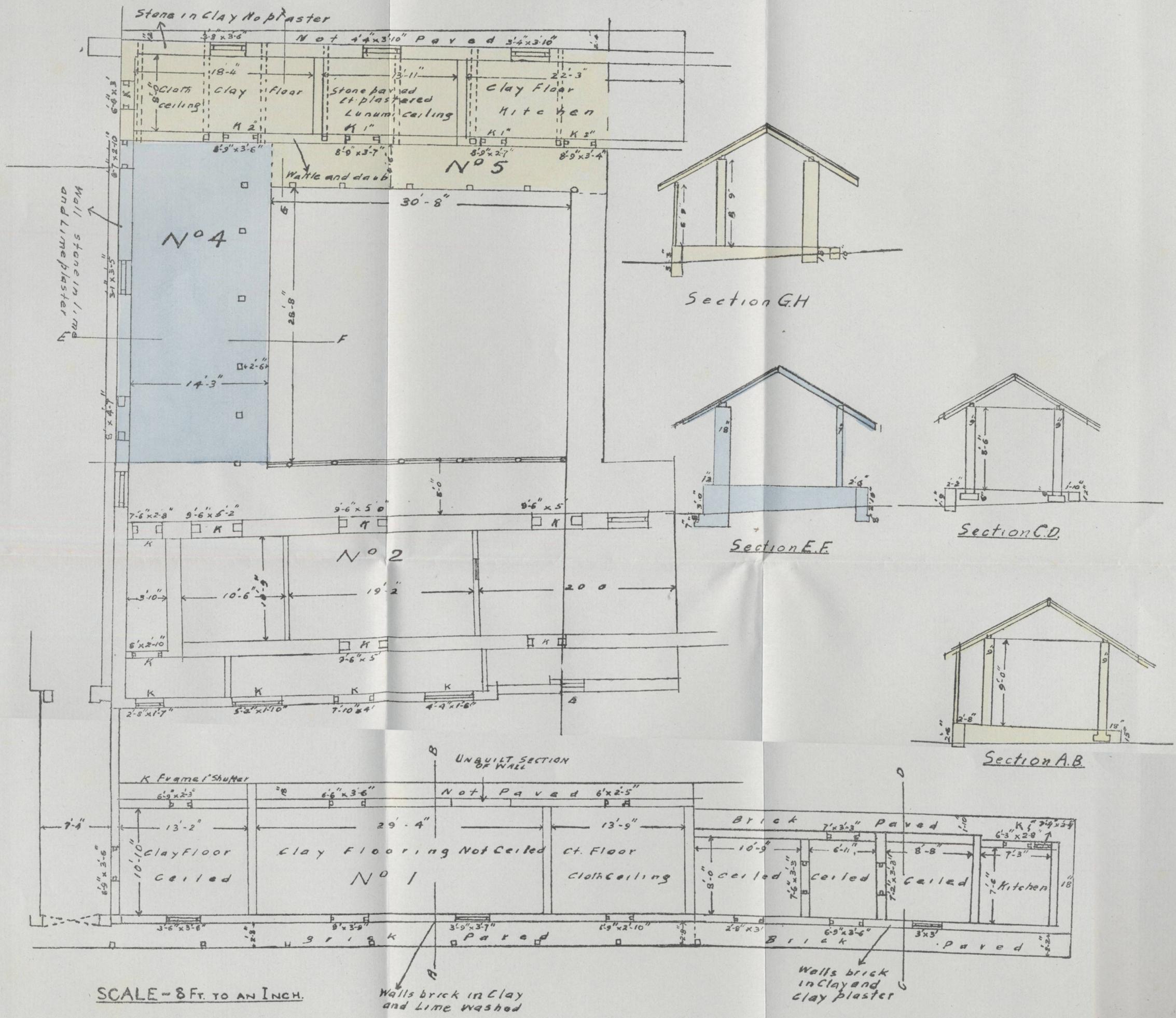
Area of Lot	..	1 is	..	A.	R.	P.	
	..	1 is	..	0	0	04	
..	..	2a ,,	..	0	0	01	
..	..	2 ,,	..	0	0	05	
..	..	3 ,,	..	0	0	11	
..	..	4 ,,	..	0	0	01 4/5	
..	..	5 ,,	..	0	0	02 1/4	
..	..	6 ,,	..	0	0	04	
..	..	7 ,,	..	0	0	00 4/5	30
..	..	8 ,,	..	0	0	00 2/5	
..	..	9 ,,	..	0	0	06 3/5	
..	..	10 ,,	..	0	0	01 1/10	

The above areas are included in the total area A1—R3—P30 shewn in plan.

I am Sir,
Your obedient servant,
(Sgd.) P. SPENCER.

The District Judge,
Kandy.

No. 19
 SPAAR'S VALUATION REPORT AND PLAN
 21. 9. 1940.



No. 18.

Statement of the 3rd and 4th Defendants.

No. 18.
Statement of the
3rd and 4th
Defendants, 29th
August, 1940.

On this 29th day of August, 1940.

The statement of the 3rd and 4th Defendants abovenamed appearing by Victor Mahima Guruswamy, their Proctor, states as follows:—

1. These Defendants say that Parusala Rajaguru Dharmaskanda Dhammajothi Anunayake Thero claimed the monastic rights of succession on two sacerdotal lines, one from his tutor Mahalle who was himself the pupil of Vehella Gunaratne who was in the pupillary succession of Saranankarapala of Moratota Paramparawa.
2. The said Mahalle had rights of possession in the monastic cells shown as Lots 1, 4 and 5 in the plan filed in this case commonly known as Mahalle Pansala and Paranatala Ratnapala in the monastic cell shown as Lot 2 commonly known as Meda Pansala.
3. The said Parusala entered into possession of the said monastic cells as one entity—those in Lots 1, 4 and 5 as pupils of Mahalle and those in Lot 2 on the Paraveni Deed P1 from Paranatala Ratnapala.
4. Parusala possessed the said cubicles as his own, improved them and his rights have devolved on his sacerdotal heirs the present Defendants and Menerigama Dhammananda Thero who have continued to occupy and improve the said cubicles.
5. The Supreme Court has, however, held that Parusala's possession of the Pansala which had belonged to the Moratota line had not given the Defendants a prescriptive title.
6. The Defendants state that Parusala and Defendants have improved the cubicles and in Lots 1, 4 and 5 as they lawfully might as the sacerdotal heirs of Mahalle and have improved these in Lot 2 under the mistaken notion that the rights of Moratota to Meda Pansala had devolved on them through Paranatala Ratnapala.

(Sgd.) V. M. GURUSWAMY,
Proctor for
3rd and 4th Defendants.

No. 19.

Spaar's Valuation Report and Plan

21st September, 1940.

No. 19.
Spaar's Valuation
Report and
Plan—21st Sep-
tember, 1940.

District Court, Kandy, Case No. 45415.

Sir,

I have the honour to submit my valuation report in the above case. I consider that items 4, 5, 7, 9, 11 with the exception of the title 12, 13 and 14, in the estimate submitted by me, are of more recent date than the rest of the items in building block No. 2.

No. 19.
Spaar's Valuation Report and Plan—21st September, 1910—
Continued.

I herewith submit estimates of my valuation for buildings Nos. 1, 4 and 5 noting items of work done at a more recent date on Nos. 4 and 5. I consider building No. 1 of recent date. I annex a ground plan of buildings 1, 2, 4 and 5 with sections which might be of help to the Court.

I am, Sir,
Your obedient servant,
(Sgd.) A. MORLEY SPAAR.

The District Judge,
Kandy.

Valuation Report in District Court Case No. 45415.

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<i>Items.</i>	<i>Building No. 1, Section 1.</i>	Rs.	Cts.	Rs.	Cts.
9.24 ...	Cubes excavation in foundations and filling to floor level	1	00	9	24
1.95 ...	Cubes random rubble masonry in cubes	12	00	23	40
1.60 ...	Sqrs. brick paving in cubes	7	50	12	00
8 ...	No. 5 verandah posts 4" sqrs.	2	00	16	00
10.12 ...	Cubes brick masonry in clay mortar	25	00	253	00
13.60 ...	Sqrs. roofing in sawn timber covered with half round tiles	27	50	374	00
1.42 ...	Sqrs. ceiling in planks on bearers	17	50	24	85
1.49 ...	Sqrs. cloth ceiling	3	00	4	47
1.49 ...	Sqrs. stone paved flooring, cement plastered	15	00	22	35
1 ...	No. door frame 6.6" × 3.6"	6	00	6	00
49 ...	Sqr. ft. doors with Kandyan type frames and 1" thick shutters	1	00	49	00
57½ ...	Sqr. ft. 1" batten doors with frames	80		46	00
25½ ...	Sqr. ft. batten windows with frames	80		20	20
	Total	Rs...		860	51

<i>Items.</i>	<i>Building No. 1, Section 2.</i>	Rs.	Cts.	Rs.	Cts.
3.96 ...	Cubes excavation in foundations and filling to floor level	1	00	3	96
1.56 ...	Cubes random rubble masonry in cubes	12	00	18	72
1.71 ...	Sqrs. brick paving in cubes	7	50	12	82
6.21 ...	Cubes brick masonry in clay mortar	25	00	155	25
14.26 ...	Sqs. clay plastering in walls	2	50	35	65
7.79 ...	Sqs. roofing in sawn timber covered with half round tiles	27	50	214	22
2.11 ...	Sqs. ceiling with ½" jak planks on joists	27	50	58	02
2.65 ...	Sqs. brick paved flooring, cement plastered	17	50	46	37
1.35 ...	Sqs. ft. batten doors and windows 1" thick with frames	80		108	00
	Rs. ...			653	01

<i>Items.</i>		<i>Building No. 4.</i>	Rs. Cts.	Rs. Cts.	No. 19. Spaar's Valua- tion Report and Plan—21st Sep- tember, 1940— <i>Continued.</i>
	9.90 ...	Cubes excavation in foundations and filling to floor level ...	1 00	9 90	
	2.70 ...	Cubes random rubble masonry in clay in cubes ...	12 00	32 40	
	4.45 ...	Random rubble stone masonry in lime mortar in walls ...	20 00	89 00	
	3.96 ...	Sqs. lime plaster in walls and whitewashing ...	4 50	17 82	
	7.92 ...	Sqs. roofing in sawn timber covered with half round tiles... ..	27 50	217 80	
	6 ...	Nos. Kandyan carved posts, 7" sqr. ...	20 00	120 00	
	36 ...	Sqr. ft. Kandyan door with frame ...	3 00	108 00	
10	19 ...	Sqr. ft. Kandyan door with frame ...	1 00	19 00	
	10½ ...	Sqr. ft. 1" batten windows with frame ...	80	8 40	
Total ... Rs.				622 32	

<i>Items.</i>		<i>Building No. 5.</i>	Rs. Cts.	Rs. Cts.
	7.49 ...	Cubes excavation in foundations and filling to floor line ...	1 00	7 49
	1.64 ...	Cubes random rubble stone masonry in clay in cubes ...	12 00	19 68
N	8.11 ...	Cubes random rubble stone masonry in walls in clay mortar	15 00	121 65
	3.20 ...	Sqs. wattle-and-daub walls	8 00	25 60
N	10.29 ...	Sqs roofing in sawn timber covered with half round tiles	27 50	282 97
20	5 ...	Nos. verandah posts	4 00	20 00
	1 ...	Nos. verandah posts	12 50	12 50
N	1.12 ...	Sqrs. stone paved cement plastered flooring	15 00	16 80
N	1.12 ...	Sqs. Lunumidella ceiling on bearers	22 50	25 20
N	1.45 ...	Cloth ceiling	3 00	4 38
N	47½ ...	Sqr. ft. glazed and batten windows... ..	80	38 00
	52½ ...	Sqr. ft. batten doors 1" thick with Kandyan frame ...	1 00	52 50
	19 ...	Sqr. ft. batten door 2" thick with Kandyan frame ...	1 25	23 75
	59½ ...	Sqr. ft. batten doors 2" thick with Kandyan frame ...	1 50	89 25
30	7 ...	Nos. cross beams Kandyan type 12" × 4"	8 00	56 00
	5 ...	Nos. posts set in wattle-and-daub walls to support cross beams	5 00	25 00
	1.23 ...	Cubes brick masonry in clay mortar	25 00	30 75
Total Rs. ...				851 58

Kandy,
21st September, 1940.

(Sgd.) A. MORLEY SPAAR.

Plaintiff's Further Evidence.

MR. GRATIAEN calls :—

P. SPENCER, sworn, age 53, Surveyor, Kandy.

Examined by Mr. VAN REYK.

On a commission from this Court I went to make a plan of the Meda Pansala as shown by the Plaintiff in my plan. Defendants said Lot 2 comprised Meda Pansala. I took with me (X) title Plan of 27-2-1863. X showed the property belonging to Malwatte Vihare. The inset shows the portion which belonged to the Meda Pansala approximately the extent of Meda Pansala 10 would be about 3 acres.

Lots 7, 8 and 9 fall within the green edged portion. Lots 3, 4, 5 and 6 fall within the portion shown as buildings in 1863. The building hatched blue in the inset corresponds to the buildings 1, 2, 3, 4, 5 and 6 in my plan. I am not prepared to say that the buildings now on the land are identical with the buildings in the plan in 1863, but the site is the same, although the contour slightly differs. The land described in D6 as forming a road, I identify as the road I have shown in the inset. It is the portion tinted green. Cross-examined by Mr. PERERA.

Spencer Cross-
examination.

In the centre is the Poyage. It is larger than this hall here. Ordination 20 takes place here. Surrounding the hall is the ground. There are buildings practically on the four sides. The road is motorable from Victoria Drive up to the Poyage. The Poyage and the buildings round it stand on ground which is about 1/2 an acre.

Within these premises there are many residences for the priests. Each building has several cubicles. I don't know that the Malwatte Chapter consists of 24 priests.

Seven is a detached building, but quite close to Lot 3 and it is a bare bit of land. Plaintiff claimed it. I can't say what that lot was. Lot 9 is about two chains away from Lot 3 as shown in my plan. Mrs. Keyt is in occupation of 30 that and, to my knowledge, she has been in occupation of that for the last 30 years. I have been inside Lot 2. It has 2 cubicles each is about 10x12 ft. They were occupied. I did not go into Lot 3. Four is an open space. It has no cubicles. Five has several cubicles and several priests. Six is an open space with 2 cubicles on either side. Two Defendants made claim and I noted that. I was not there when Mr. Spaar went there.

There is a priest who owns a residence attached to Lot 6, and with a common wall in between. I could see nothing to indicate any natural boundary or feature to separate Lot 6 from the rest of the land. There is no building attached to the Meda Pansala buildings as pointed out by the 40

Plaintiff on the South, West or North. The Poyage does not fall within the portion tinted green in the inset, but building 1 abuts on the Poyage.

No. 20.
Plaintiffs' further evidence.
Spencer Cross-examination.—
Continued.

(Sgd.) G. C. THAMBYAH,
D.J.
2/6.

Mr. Spencer is directed to show in (plan) the total extents of Lots 1, 2, 3, 4, 5 and 6 and the portion of land tinted green in the inset. Also to show the extent of Lot 2 separately.

It is 4-30 p.m. Further hearing is adjourned for 26th June, 1939.

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(Sgd.) G. C. THAMBYAH,
D.J.
2/6/39.

28th May, 1940.

No. 45415.

Mr. WICKREMANAYAKE, assisted by Mr. GRATIAEN, instructed by Mr. VANDERWALL for the Plaintiffs.

Mr. OBEYESEKERE, assisted by Mr. ARTHUR PERERA, instructed by Mr. GURUSWAMY and Mr. RATNAYAKE for the Defendants.

The dispute between the parties is—

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- (1) as to the identity of Meda Pansala, and
- (2) as to what compensation, if any, the Defendant is entitled to from the Plaintiff for improvements effected by him.

It is common ground that Lot 2 in the plan is included in Meda Pansala although the Plaintiffs say that Lots 1 to 9 form Meda Pansala.

The Defendants, on the other hand, claim to be in possession of Lots 1, 4 and 5 under another title.

As a large amount of evidence is intended to be led on the question of the identity of Meda Pansala as well as on the question of compensation for improvements and as to the persons who made the improvements, it does not seem possible to conclude this case to-day. The trial will, therefore, have to be postponed to be heard by the permanent District Judge who will be assuming duties on the 1st of July, 1940, as he himself has already heard one witness and the argument on the law. It is, however, agreed between the parties that the Defendant would give up possession of Lot 2 to the Plaintiff if he tenders security to the value of Rs. 3,000 to the satisfaction of the Court.

Trial specially fixed for the 4th and 5th of July, 1940.

(Sgd.) W. SANSONI,
D.J.

No. 20.
 Plaintiffs' 3-7-40.
 further evidence.
 Spencer Cross-
 examination—
 Continued.

Case called. I am engaged in hearing a heavy criminal case which I am informed by the Crown Advocate will take tomorrow also. I inform Proctors that another date will be fixed on 8-7 suitable to Colombo Counsel.

(Sgd.) G. C. THAMBYAH,
 D.J.

28th August, 1940.

Mr. Advocate AMARASEKERA with Mr. GUNAWARDENA, instructed by Mr. VANDERWALL for the Plaintiff.

Mr. Advocate J. E. M. OBEYESEKERE with Mr. RAJARATNAM and 10
 Mr. ARTHUR PERERA, instructed by Mr. GURUSWAMY and Mr.
 RATNAYAKE for the Defendants.

Mr. Amarasekera cites 39 New Law Reports, page 236. After hearing Counsel for the parties, it seems to me that admittedly there is no dispute between the parties that Lot 2 is Meda Pansala.

As regards Lots 1, 4 and 5 Counsel for the Defendants state that the Defendants claim title to those lots upon an independent title which is different to the title which was set up by them in the answers filed. As to whether this title is identical with the title originally set up or is an independent title is a matter which the Court will have to determine after examining the title 20
 which is now set up. For this purpose I direct the Defendants, who claim title to lots 1, 4 and 5 to immediately file in Court a statement or pleading embodying in detail the manner of the devolution of their title to those lots and serve a copy of that statement or pleading to the Plaintiff's Proctor.

It is admitted by Counsel for the Plaintiffs that as regards Lots 3 and 6 and other Lots 7, 8, 9 and 10 which are claimed by persons who are not parties to those proceedings, the investigation of the title to those lots will not be held in these proceedings and that in any declaration which the Court may ultimately give on the question as to what is comprised within the Meda Pansala regard will not be had to the title to Lots 3, 6, 7, 8, 9 and 10 without 30
 prejudice to the rights of the Plaintiffs to vindicate their title to those lots in separate proceedings.

If, however, as a result of my finding on Issue 13, which for the purpose of enquiry, which I now propose to hold, would be modified by substituting in place of the lots referred to in that issue the following lots only—1, 2, 4 and 5—it is found that Lots 1, 4 and 5 do form part of the Meda Pansala, the Defendants will be entitled to claim compensation in respect of any improvements effected by them, if, as a matter of law, it is held that they are entitled to claim such compensation.

(Sgd.) G. C. THAMBYAH, 40
 D.J.

Mr. SPENCER is directed to comply with the directions given to him on the 2nd of June, 1939.

No. 20.
Plaintiffs'
further evidence.
Ratanapala—
Examination.

Mr. AMARASEKERA calls :—

AMUNUGAMA RATANAPALA, affirmed, about 29 years Degaldoruwa Vihare.

Q. You reside at Degaldoruwa Vihare?

A. Yes.

Q. You are the pupil of Piyaratana Thero and Incumbent of Vihare?

10 *A.* Yes.

Q. You are also the Trustee of Degaldoruwa Vihare?

A. Yes.

Q. So appointed by Dr. Paul Peiris when he was Trustee?

A. Yes.

Q. You are also one of the Plaintiffs in this action?

A. Yes, I am the 2nd Plaintiff.

Q. How old are you?

A. About 28 or 29 years.

Q. How long have you been a priest?

20 *A.* About 14 or 15 years.

Q. When were you ordained?

A. This is the 9th year since my ordination.

Q. You know the Meda Pansala which is appurtenant to Degaldoruwa?

A. Yes.

Q. Can you give us the boundaries, as you know, to the Meda Pansala and its premises?

A. Yes. On the North there is a Poyage and the building known as the Sanghika buildings.

30 *Q.* In relation to the Poyage and the Meda Pansala where are the Sanghika buildings?

A. Behind the Poyage are the Sanghika buildings.

Q. With reference to the Meda Pansala and the Poyage where are the Sanghika buildings?

A. In front of the Poyage is a row of Sanghika buildings.

No. 20.
Plaintiffs'
further evidence.
Ratanapala
Examination—
Continued.

(To Court :—

It is to the North of the Poyage).

Q. Are there any Sanghika buildings also to the North of the Poyage?
Shown Plan (20a) by Mr. SPENCER.

Q. Will you point out to me where the Poyage is which you said is to the North of the Meda Pansala? (He points out the Poyage).

Q. If that is Poyage, will you tell me where the Sanghika buildings are?

A. They are to the North as well as to the East of the Poyage.

(To Court :—

Q. Are there any Sanghika buildings anywhere else? 10

A. There are no other Sanghika buildings).

Q. What is the Eastern boundary of the Meda Pansala?

A. Rambukwella Pansala, the garden of Weliwita Pansala. On the East the boundaries are Rambukwella Pansala and Hippola Pansala.

Q. What are the boundaries of the premises belonging to the Meda Pansala?

A. The boundaries of the Meda Pansala premises on the East consists of Hippola Pansala and Rambukwella Pansala and the boundary of premises (watta) of Sangaraja priest.

Q. To the South? 20

A. South by the land lying below the road leading to Hillwood School?

Q. On the West?

A. West by the Poyamalluwa Vihare.

(Shown Plan)—

Q. Could you show me on this plan the Poyamalluwa Vihare?

(The witness points out the premises lying to the West of the portion tinted green within which premises the Poyamalluwa Vihare is situated).

Q. What is the Poyamalluwa Vihare?

A. It is the name given to the residence of the Mahanayake priest. Pamune Mahanayake resides there now. He has a right of residence there. 30

(The witness points to document P2 which says that the Pansala and the garden is described as one amunam paddy sowing extent).

Q. In the same document there is reference made to an Agreement No. 72 dated 27th May, 1848, by which a sum of £4 per annum was agreed to be paid for the ground covered by the opening on this garden of a road leading to Mr. Piachaud's house?

A. Yes.

Q. To what place does that road lead to to-day ?

A. It leads to Hillwood School now.

I draw the attention of the Court to the recital in P₃ which recites that the garden belonging to the Pansala is in extent one amunam.

Q. You stated to the Court that the Eastern boundary to the Pansala and the premises—one of the boundaries was the Hippola Pansala ?

A. Yes.

I produce Deed No. 24425 of the 6th of October, 1866 (P₁₃) by which one Seelawansa Nayake Unnanse conveys to Hippola Sobhitha of Ampitiya Vihare and to his relation pupil Sumangala of Gangarama the "Legun Gewal" built at his own expense and held and possessed by him situate at the Malwatte Vihare. I point to the boundaries in that deed.

Q. To the East is given the Pansala of Kotikapolla ?

A. Yes.

Q. Is the Kotikapolla Pansala there to-day as the Eastern boundary of Hippola ?

A. Yes.

Q. The Southern boundary is given as the Rambukwella Nayake Unnanse's row of houses ?

20 *A.* Yes.

Q. Is that so to-day too ?

A. Yes.

Q. Is that one of the Eastern boundaries which you mentioned ?

A. Yes.

Q. The Western boundary is given as the Pansala of Morathota Nayake Unnanse ?

A. Yes.

Q. The Northern boundary is the Sanga row of Sanghika houses ?

A. Yes.

30 *Q.* Seelawansa Nayake Unnanse is now dead ?

A. Yes.

I also produce Deed No. 23698 of 17th March, 1865 (P₁₄) (Mr. Obeysekere objects to the admission of the statements contained in these deeds unless these statements can be proved and rendered admissible under Section 32 of the Evidence Ordinance.

No. 20.
Plaintiffs'
further evidence.
Ratanapala—
Examination—
Continued.

At this stage in view of the objection taken with regard to the admissibility of the documents, which are now being produced for the purpose of proving statements embodied in them relative to the boundaries in these documents Mr. Amarasekera desires to have an opportunity of citing authorities, which he is not prepared with now, to make the statements in those documents admissible.

Mr. Obeyesekere is, therefore, not prepared to cross-examine the witness piecemeal. I, therefore, adjourn the cross-examination of this witness until after Mr. Amarasekera has been able to procure the necessary Authorities for the purpose of the argument).

(Sgd.) G. C. THAMBYAH,
D.J.

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Ratanajothi—
Examination.

K. S. RATANAJOTHI, affirmed, 65 years of Sirimalwatta Vihare. Sirimalwatta is 2 miles from Kandy, that side of Levella.

Q. Have you got a Pansala at the Malwatte?

A. Yes.

Q. What is it known as?

A. Kotikapolla Sobhitha Mahanayake's Pansala.

Q. You live there too?

A. Yes.

20

Q. You know the Plaintiffs in this case?

A. Yes.

Q. You know the Defendants?

A. Yes.

Q. Where do the Defendants live?

A. They reside at Malwatte Vihare. I live at Sirimalwatte. Once in a way I go to Malwatte. I live at Kotikapolla Mahanayake's Pansala also.

Q. When you come to Kandy you live there?

A. Yes.

Q. Which part of Malwatte Vihare?

A. They reside at Meda Pansala.

30

Q. You know all the 4 Defendants?

A. Yes.

Q. What is the Western boundary of your Pansala?

A. Rambukwella Pansala and the garden of Meda Pansala on the other side.

Q. You know Hippola Pansala ?

A. Yes.

(To Court :—

Q. Where does Hippola Pansala lie with reference to the Meda Pansala?

A. Immediately to the East of Meda Pansala).

Q. Do you know the temple where the Reverend Dewamitta lives ?

A. Yes.

Q. What is his full name ?

A. Bentara Dewamitta.

10 *Q.* Is that temple situated on the Meda Pansala premises ?

A. Yes.

Q. Is that building also a part of Meda Pansala ?

A. Yes.

Q. You know the bungalow known as "Keyt's bungalow" ?

A. Yes.

Q. Is that within the Meda Pansala premises ?

A. Yes.

(To Court :—

Q. How do you know ?

20 *A.* For about 20 or 30 years I am at Malwatte.

Q. How do you know it is in the Meda Pansala premises ; it may be the Malwatte premises ?

A. I know. Everyone knows about it).

Q. Do you know what is to the North of the Meda Pansala ?

A. Yes, the Poyage.

Q. There are some Sanghika buildings ?

A. Yes.

Q. They are also to the North ?

A. Yes.

30 *Q.* What are these Sanghika buildings ?

A. Those rooms were built for some pupils of Morathota priest.

Q. You know the road leading to Hillwood ?

A. Yes.

Q. Through which premises does it go ?

A. It goes through the Meda Pansala premises.

No. 20.
Plaintiffs'
further evidence.
Ratana Jothi
Cross-examination.

(Cross-examined by Mr. OBEYESEKERE).

Q. You say that you live at Sirimalwatte?

A. Yes.

Q. You are the incumbent of the temple there?

A. Yes.

Q. Who was your tutor?

A. Sirimalwatte Sumangala Nayake.

Q. You said that you reside at the Kotikapolla Pansala?

A. Yes.

Q. How did you become entitled to that Pansala?

10

A. Because Sirimalwatta and this Pansala are in one deed.

Q. It comes in the same "paramparawa"?

A. Yes.

Q. Are you aware that the whole of Malwatte Vihare is only 8 acres
3 roods and 24 perches?

A. Yes.

Q. So that if Meda Pansala consists of one amunam or nearly 2 acres,
then that means that Meda Pansala is nearly 1/4 of the Malwatte Vihare?

A. Yes.

Q. That one-fourth of Malwatte went as an appurtenance of Degal-
20 doruwa—a temple about 3 miles away?

A. Yes.

Q. Are you aware that the land which belongs to the Malwatte Vihare
was gifted to the Sangha in 1751 by King Kirthi Sri Rajasingha?

A. I have heard.

Q. In fact, there is a reference to that fact in the Mahawansa?

A. Yes, I know that the whole of the land which consists of the Mal-
watte Vihare was gifted by King Kirthi Sri Rajasingha.

Q. Various priests built Pansalas on the land of the Malwatte Vihare
with the consent of the Sangha Sabha?

30

A. Yes.

Q. A Pansala is the residing house of a priest?

A. Yes.

Q. No land can be attached to the Pansala as such?

A. Why not, there is land attached to it.

Q. The land might be attached to the Sanghika?

A. Yes.

Q. As a matter of fact, any priest has a right to take shelter in the Pansala?

A. Only the descendants of that "paramparawa."

Q. It is the fact that various priests, who had Vihares elsewhere, built Pansalas for themselves on the Malwatte Vihare lands?

10 *A.* Yes, with some title to the land and according to the tutor's rights.

Q. There is a Chapter at Malwatte?

A. Yes.

Q. Frequently members of the Chapter are incumbents of temples elsewhere?

A. Yes.

Q. As members of the Chapter they built their own Pansalas or residences at the Malwatte Vihare?

A. If they have no right, they cannot.

Q. Take, for instance, Kottikapolla Pansala, who built it?

20 *A.* Kottikapolla Sobitha Mahanayake.

Q. How long ago?

A. He was the 6th Chief High Priest.

Q. He was the Head of the Chapter then?

A. Yes.

Q. Did he have a temple elsewhere?

A. He had about 10 or 12 other Pansalas including Sirimalwatta.

Q. When he became Head of the Chapter, he built a Pansala for him to reside at Malwatte?

A. I do not know.

30 He had some right to build a temple on that.

Q. What is the right he had?

A. Because he had a right from the pupils of the Chief High Priest Sangharaja.

Q. How old are you?

A. 65 years.

No. 20.
Plaintiffs'
further evidence.
Ratanajothi—
Cross-examination—*Continued.*

Q. Since when have you resided at Kottikapolla Pansala.

A. In 1925, I came to reside there for the first time.

Q. Your knowledge of Malwatte Vihare, the Meda Pansala and the other Pansalas dates from 1925 ?

A. From about 35 years' time I know them.

I was residing at Malwatte when I was learning when I was a Samanera.

Q. How many years did you remain there as a Samanera before becoming Upasampadha ?

A. About 4 years.

Q. After being ordained as an Upasampadha priest you returned to 10 your own temple ?

A. I lived there and here also.

Q. You came here as a pupil ?

A. Yes.

Q. When you finished learning you went back to your temple at Sirimalwatta ?

A. I went into possession of this Pansala after a D. C. case here. Before that also I had the right ; but whenever I go there I remained there.

(To Court :—

Q. Who disputed your claim ?

20

A. There are two other claimants from our "paramparawa")

I have the deed for the whole temple. There is a kitchen, there is a store room and there is another bedroom.

Q. What you actually possess is one rood ?

A. I have shares of all the other verandahs, compounds, except those rooms which are under lock and key. I am making use of all the other rooms.

Q. You said just now that the Western boundaries of Kottikapolla is the garden of Meda Pansala ?

A. Rambukwella Pansala is to the East of Meda Pansala. It is to the West of our Pansala.

30

Q. You were given the boundaries of Meda Pansala ?

A. Yes.

Q. You gave the Western boundary. You said that the Western boundary of Kottikapolla is the Meda Pansalawatte ?

A. Meda Pansala garden is to the South. The garden of Meda Pansala is to the South of the Pansala in which I reside.

Adjourned for to-morrow.

(Sgd.) G. C. THAMBYAH,
D.J.

No. 45415.

29th August, 1940.

Appearances as before.

Statement of claim filed.

(Statement of the 3rd and 4th Defendants, as directed by Court yesterday, filed. I am informed that the 1st and 2nd Defendants also adopt the statement filed by the 3rd and 4th Defendants).

K. S. RATANAJOTHY, Recalled, affirmed.

Q. You know the second Plaintiff in this case?

10 A. Yes.

Q. He is a pupil of yours?

A. Yes.

Q. You have a special interest in him?

A. Yes.

Q. The 2nd Plaintiff is also the pupil of the 1st Plaintiff?

A. Yes.

Q. And a pupil also of the Mahanayake of Malwatte Vihare?

A. Yes.

20 Q. You remember giving evidence in the earlier proceedings in this case?

A. Yes.

Q. You were called by the Plaintiffs?

A. Yes.

Q. Giving evidence on that occasion you said this "1st Plaintiff and I were almost brought up together at Degaldoruwa"?

A. Yes.

Q. That is a correct statement?

A. At the same time, but we are not of the same "Guru paramparawa."

Q. You are great friends?

30 A. Yes.

Q. You will do what you can to further the interests of the 1st and 2nd Plaintiffs?

A. If help is required, we give it to anyone.

No. 20.
Plaintiffs'
further evidence.
Ratanajothi—
Cross-examination.—Continued.

No. 26.
Plaintiffs'
further evidence.
Ratanajothi
Cross-examination—Continued.

Q. Including giving evidence ?

A. That is a thing that we know.

Q. Do you know the first Plaintiff very well ?

A. Yes.

Q. He has not been admitted an Upasampadha priest ?

A. Yes, he is ordained.

Q. Has he been ordained an Upasampadha priest ?

A. Yes.

Q. By whom ?

A. By Rambukwelle Mahanayake Tibbotu Mahanayake.

10

Q. Does the Ordination appear in the registration of Bhikkus ?

A. I do not know those things. His name appears in the Lekam Mitiya.

Q. He is a Samanera ?

A. He cannot say that.

Q. You say that you have occasionally resided in what you thought was the Meda Pansala ?

A. Yes.

(To Court :—

Q. Can you point out the room in which you resided ?

A. That Pansala does not belong to us ; when we go there, any room 20 that they prepare for us we occupy).

Q. Why did you occupy the room in the Meda Pansala when you had your own Pansala ?

A. In those days the descendants of our " paramparawa " has occupied all the rooms of our temple.

(To Court :—

Q. In the Malwatte premises the Pansala that belongs to your " paramparawa " was in perpetual occupation of the members of that " paramparawa " ?

A. Yes).

Q. Can you remember when you last occupied a room in the Meda 30 Pansala ?

A. Towards the year 1904 or 1905 and before that also.

(To Court :—

Q. Never after that?

A. Yes).

Q. As whose guest did you do so?

A. My tutor Akwatte priest was there.

Q. But he had no right to the Meda Pansala?

A. Why not?

Q. What right had he?

A. I do not know about his rights.

10 *Q.* The Akwatte priest about whom you speak is the 3rd Defendant's tutor?

A. He might be.

Q. At the time that you resided in what you thought was the Meda Pansala Parusala was alive?

A. Yes.

Q. He occupied a certain number of rooms?

A. Yes.

The Akwatte priest was at Degaldoruwa also.

(To Court :—

20 Myself and Akwatte priest lived at Degaldoruwa).

Q. Parusala was in occupation of a certain number of rooms in Malwatte Vihare?

A. Yes.

Q. He occupied those rooms until he died?

A. Yes.

Q. When you say that you have resided in the Meda Pansala, what you mean is that you have occupied one of those rooms occupied or possessed by Parusala?

A. Yes.

30 *Q.* That is why you say that that room that you occupied is part of the Meda Pansala?

A. Yes.

Q. Parusala claimed to be the pupil of Mahalle?

A. That may be so. I do not know.

Q. You do not know upon what right or rights Parusala occupied those various rooms in Malwatte Vihare?

A. I cannot say

(Sgd.) G. C. THAMBYAH,
D.J.

No. 20. P. SPENCER, Sworn.
 Plaintiffs' further evidence. (To Court :—
 Spencer—
 Examination.

Q. You produce your computation of the areas of Lots 1 to 10?

A. Yes.

The area of Lot 2 is .05 of a perch)

Q. In your evidence you said the extent of the Meda Pansala would be about 3 acres?

A. Yes.

Q. That is not correct?

A. No.

10

Q. The part that is edged green is 1 acre 3 roods and 30 perches?

A. Yes.

Q. You had not computed the extent at the time you gave evidence?

A. Yes.

Q. Plaintiffs claimed Lots 1-6 as buildings appertaining to the Meda Pansala?

Shown Plan.

A. Yes.

Q. Lots, 7, 8, 9 and 10 are built on the premises belonging to the Meda Pansala?

20

A. Yes.

Q. The position of the Defendants was that building Lot 2 is the Meda Pansala?

A. Yes.

Q. They claimed compensation for it?

A. Yes.

Q. They also said that there was no ground attached to Lot 2—what they called the Meda Pansala?

A. Yes.

Q. They also stated that the ground on which the various Pansalas stand belong in common to all the High Priests?

A. Yes.

Q. The Defendants stated that building 1 belongs to Parusala Nayake Unnanse?

A. Yes.

Q. The Defendants also stated that it is built on the ground belonging to the Poyage?

A. Yes.

Q. They stated that building 3 belonged to Ginigathpitiye Nayake Unnanse?

A. Yes.

Q. They said that building 4 was built by Parusala and that it belongs to him?

A. Yes.

10 *Q.* Building 5 they said belonged to Mahalle Nayake Unnanse?

A. Yes.

Q. They said building 6 belonged to Kabalewita Nayake Unnanse?

A. Yes.

Q. You went to the spot on the 16th of July, 1938?

A. Yes.

Q. On that day building 6 was claimed by H. Rewata Unnanse?

A. Yes.

Q. Buildings 3, 8, 9 and 10 were claimed by D. Dewamitta Unnanse?

A. Yes.

20 (Letter of 13th September, 1938, by Mr. SPAAR referred to.)

Q. Did the Defendants at any time say that they make no claim to buildings other than Lot 2?

A. They first said that Plaintiff was entitled to Lot 2 and that various other buildings belonged to other priests from whom they also claimed title.

Cross-examined—

Q. The Plaintiff's position was first that buildings 1-6 constituted the Meda Pansala?

A. Yes.

30 *Q.* And that buildings 7, 8, 9 and 10 had been built on the premises of the Meda Pansala, that is to say, the land belonging to the Meda Pansala?

A. Yes.

Q. The Defendant's position was that building 2 alone constituted Meda Pansala?

A. Yes.

No. 20.
Plaintiffs'
further evidence.
Spencer—
Examination—
Continued.

Spencer—
Cross-examination.

No. 20.
Plaintiffs'
further evidence.
Spencer
Cross-examination—Continued.

Q. And that there was no ground attached to the Meda Pansala as such?

A. Yes.

Q. They also told you that the ground on which these various Pansalas stand belong in common to all the priests?

A. Yes.

Q. They then went on to tell you to which particular priests the buildings other than building 2 belonged?

A. Yes.

Q. You prepared your plan by superimposing on the plan?
Shown Plan X—

10

Q. You used that plan and the same scale?

A. Yes.

Q. That plan of 1863 described it as an allotment of land—the property of Malwatte Vihare?

A. Yes.

Q. It gave the extent as 8 acres 3 roods and 24 perches?

A. Yes.

(Sgd.) G. C. THAMBYAH,
D.J.

Siri Sumangala
Examination.

PAHAMUNE SIRI SUMANGALA—Affirmed.

20

Q. How old are you?

A. 89 years.

Q. You are the Mahanayake of the Siamese Sect and the Chief Priest of the Malwatte Chapter?

A. Yes.

Q. You reside at the Malwatte Vihare?

A. Yes, in the Poyamaluwa Temple.

In 1875 I came to Malwatte Temple. Medagama Maha Nayake was the Mahanayake then.

The Mahanayake was at Malwatte Vihare. I am at the Poyamalluwa. 30

Q. Do you know the Meda Pansala at Malwatte Vihare?

A. Yes.

Q. Whose Pansala is that, so far as you know?

A. It belonged to Morathota Mananayake.

(To Court :—

Q. When you say “belonged to him” what do you mean?

A. It was gifted to him by King Rajasingha.)

Q. Rajasinghe was a pupil of Morathota Mahanayake?

A. Yes.

Q. The Malwatte Vihare was gifted by Kirthi Sri Rajasinghe to the Sangharaja?

10 *A.* Yes.

Q. That is the Weliwita Saranankara Sangharaja?

A. Yes.

Q. The Meda Pansala had the grounds appertaining to it?

A. Yes.

(Mr. Obeyesekere objects to evidence being led on the question whether the Meda Pansala had grounds appertaining to it because the plaint has proceeded on the footing that the Meda Pansala consists of certain buildings only.

The objection is noted but I will let the answer go in).

(To Court :—

20 *Q.* Were these gifts to Sangharaja and Morathota embodied in any Sannas?

A. I do not know.)

(The witness is not entitled to give oral evidence of a gift which can only be proved by the production of a document. In the absence of a Sannas, as admitted by the witness, he is entitled to give oral evidence only with regard to acts of possession within his own knowledge from which inferences as to title might be drawn by the Court. He is not entitled, however, to speak to any gifts oral or otherwise made by the original grantors).

Q. Why is this temple called the Meda Pansala?

30 *A.* Because it is built between Poyamaluwa and Sangharaja Pansala.

Q. You know these Defendants?

A. Yes, they are the priests of Malwatte Pansala.

Q. You know where they reside now?

A. They are residing at the Meda Pansala.

No. 20.
Plaintiffs'
further evidence.
Siri Sumangala—
Examination—
Continued.

No. 20.
Plaintiffs'
further evidence.
Siri Sumangala—
Examination—
Continued.

Q. All the four of them?

A. Yes.

Q. Is that the same Meda Pansala that is known as Morathota's Meda Pansala?

A. Yes.

Q. That is the Meda Pansala which is now in dispute?

A. Yes.

Q. You know Mahalle Nayake Unnanse?

A. No.

Q. You do not know him personally?

10

A. No.

Q. You know Parusala?

A. Yes. I know him very well. We who appointed him as Anunayake. I was a member of the Chapter at the time he was appointed Anunayake.

Q. Did Parusala put up any building in the Malwatte Vihare?

A. Yes, he put up two buildings.

Q. What are they?

A. A row of Sanghika buildings and the hall where they take their meals.

Q. Did he put up any building in which the priests reside?

20

A. These are the buildings called Sanghika buildings.

Q. Apart from those 2 buildings, he did not put up any other buildings?

A. No.

Q. Did you know Ginigathpitiye Nayake Unnanse?

A. No.

Q. Did these Defendants put any buildings?

A. I do not know. I did not go that side very often; sometimes they may have done some work in the Pansala.

(To Court:—

Q. That is, they may have effected certain improvements?

30

A. They may have whitewashed).

Q. When Morathota lived at Meda Pansala, he had a Pirivena?

A. Yes, and he taught Bana to the priests.

(To Court:—

Q. The Pirivena was in these premises?

A. Yes.

Q. You say about the Pirivena purely by repute?

A. Yes.)

Q. Does this Meda Pansala consists of only two rooms?

A. It is a very big Pansala ; there are many rooms.

No. 20.
Plaintiffs'
further evidence.
Siri Sumangala—
Examination—
Continued.

(To Court :—

Q. How many rooms are there?

A. I cannot remember).

Q. You know where Bentara Dewamitta lives?

A. He is at Botota Pansala.

10 *Q.* He occupies certain rooms at Malwatte Vihare?

A. Yes.

Q. Do they form part of Meda Pansala?

A. They adjoin the Meda Pansala.

(It is admitted by Counsel for the Plaintiffs that witness is referring to Lot 3 when he referred to the rooms occupied by Bothota Dewamitta Unnanse).

Q. Do you know the Rambukwella Pansala?

A. Yes.

Q. In reference to Meda Pansala, how is it situated?

A. They adjoin.

20 (To Court :—

Q. On which side is the Rambukwella Pansala with reference to the Meda Pansaa?

A. It lies to the East of Meda Pansala).

Q. Are any of the buildings occupied by Parusala on the Poyage premises?

A. The buildings occupied by Parusala do not fall within the Poyage premises.

Cross-examined.

30 *Q.* You are aware that the land constituting the Malwatte Vihare was dedicated in 1751 by the King to the Sangha.

A. Yes.

Siri Sumangala—
Cross-examination.

No. 20.
Plaintiffs'
further evidence.
Siri Sumangala—
Cross-examination—*Continued.*

Q. Do you know this Plan of 1863?

A. I do not know, there are several plans of Malwatte Vihare.

Q. Is it the fact that about that time that this land was given to the Malwatte Vihare which became necessary to get down certain priests from Siam to carry out the Upasampada ceremony?

A. I know by repute that about the time when these premises were granted to the priesthood certain priests had to be brought down from Siam to perform Upasampada ceremony.

Q. Those priests stayed at the Malwatte Vihare?

A. Yes.

10

Q. The King built some "Avasa" for them?

A. Yes.

(To Court:—

Q. How was this Malwatte Chapter of priests formed?

A. The priests were brought down from Siam and Malwatte priests were ordained. In those days all over Ceylon there were only Samaneras. There were no Upasampada priests. At that time, Samaneras were living at Poyamaluwa. King Kirthi Sri built a temple for the residence of the priests brought from Siam and after that at Malwatte Vihare the priests were ordained. After the ordination the King asked the Sangharaja Priest "How many 20 priests do you require to carry out the work in connection with the Buddhist doctrine").

Q. Is there functioning to-day a Chapter consisting of 20 priests?

A. Yes, that is the present Karaka Sabha.

Q. You have been a member of that Sabha?

A. Yes.

Q. Before you became Mahanayake you were Anunayake?

A. Yes.

I became Anunayake after Parusala.

Q. Members of this Chapter frequently are priests from outstations? 30

A. Yes.

Q. When a priest is usually elected as a member of the Chapter it becomes necessary for him to find a Pansala at the Malwatte Vihare?

A. Some do not have such temples, they have their temples outside but some require.

Q. Do the incumbent of those outside temples have Pansalas for their use and occupation when they come into Kandy?

A. Usually, the members of the Karaka Sabha are persons who also own Pansalas in the Malwatte premises.

Q. That is they own then by pupillary succession?

Q. When you were appointed the member of the Chapter your temple was in the Kurunegala District?

A. Even at Malwatte I had.

Q. Did you not have a Pansala in the Malwatte premises?

A. I had a house there?

Q. A Pansala is a house in which a priest resides?

A. I had only one room. A Pansala has many rooms.

Q. You had a right of residence in a particular cubicle.

10 *A.* Yes.

Q. That you got through your "paramparawa?"

A. Yes.

Q. What was that "paramparawa?"

A. It is the "paramparawa" of the sixth pupil of the Sangharaja.

Q. What was his name?

A. Irriminne Maha Vipakshi.

Q. Did each of these 20, after the 20 members formed the Chapter, have a separate Pansala to themselves?

A. No.

20 *A.* When the Chapter consisted of 20 members each priest who belonged to the Chapter did not have a separate Pansala for themselves. Some had Pansalas, others who had no Pansalas or right of residence have already occupied cubicles. At that time, those who come are given rooms to stay and they are given lands too.

Q. A member of the Chapter who builds a Pansala in Malwatte Vihare would not be entitled to regard as "Pudgallika" what has passed to his successors.

30 *A.* A member of the Chapter who builds a Pansala for his own residence with the permission of the Chapter would not hold it as "Pudgallika" but the Pansala or the building would pass to the pupillary successors.

Q. A Pansala is a residence for a priest?

A. Yes.

Q. You as Mahanayake have a right of residence in the Poyamaluwa?

A. Yes.

No. 20.
Plaintiffs'
further evidence.
Siri Sumangala—
Cross-examination—
Continued.

No. 20.
Plaintiffs'
further evidence.
Siri Sumangala—
Cross-examination—*Continued.*

Q. You are now improving it?

A. I have already put up a building and I am still putting up buildings.

Q. That Poyamaluwa would pass to your successor as Mahanayake?

A. My successor can put up another building.

He cannot reside in the building that I have. Any building put up by me for my residence in the Poyamaluwa will be occupied by my pupils in preference to the succeeding Mahanayake. The land on which these buildings are put up is always regarded as Sanghika property.

Cross-examination continued (By Mr. PERERA).

Parusala was the pupil of Mahalle.

10

Q. Mahalle's tutor was Wahelle?

A. I do not know. Wahelle was in the low-country during the time of King Kirthi Sri. I cannot say who Mahalle's tutor was. I do not know Attaragama. I know by repute that Attaragama Unnanse was a priest and a pupil of Sangaraja.

Q. And as a pupil of Sangharaja had he a Pansala in the Malwatte premises?

A. He had no Pansala in the Malwatte premises.

Q. He was the tutor of the King?

A. After he disrobed himself he became the teacher of the King. 20

Q. Do you know that there were a series of cases during the time of Parusala?

A. Yes.

Q. Do you know that if Parusala was the pupil of Mahalle what did he get as the sacerdotal pupil of Mahalle?

A. Mahalle had a temple at Sabaragamuwa.

Q. He was a member of the Chapter at Malwatte?

A. I do not know.

Q. How long ago did Mahalle die?

A. I do not know. 30

Q. When did you come to know that he had a Vihare at Ratnapura?

A. I heard from Parusala.

Q. Do you know that in this case Parusala claimed right from two "Paramparawas?"

Q. Parusala till the day of his death possessed the entirety of the buildings which are now said to be Meda Pansala?

A. Yes.

Q. Malwatte Vihare has a big plan which you have in your charge?

A. Yes.

The whole of the land depicted in that plan is Sanghika including Poyamaluwa.

Q. The cubicles which lie on this land the priests have a right to occupy either by pupillary succession or by reason of the fact that they had put up
10 buildings?

A. Yes.

Q. You are one of the tutors of the 2nd Plaintiff?

A. Yes. I have taught him Bana. He is one of my pupils.

Q. He is also a pupil of the 1st Plaintiff and of Ratanajothy?

A. Yes.

Q. A priest frequently is the pupil of more than one "Paramparawa"?

A. Yes.

He may have more than one "paramparawa" but he is entitled to succeed by pupillary succession to the Chief Tutor.

20 *Q.* You know the 1st Plaintiff.

A. Yes.

Q. Is he a registered priest.

A. I do not know that.

Q. As Mahanayake, you kept a Lekammitiya?

A. Yes.

Q. Does his name appear in the Lekammitiya?

A. Yes.

I cannot say, without reference to the book whether his name appears in the register kept by the Registrar-General under the Buddhist Temporalities Ordinance.
30

Q. Is he an Upasampada Priest?

A. Yes, he was ordained at Malwatte Vihare.

Q. Immediately next to what is claimed by the Plaintiff to the Meda Pansala is the Rambukwella Pansala?

A. Yes. Same wall and, in fact, it can be regarded as one building.

No. 20.
Plaintiffs'
further evidence.
Siri Sumangala—
Cross-examination—
Continued.

No. 20.
Plaintiffs'
further evidence.
Siri Sumangala—
Cross-examin-
ation—*Continued.*

Q. Do you know what is said to be the Meda Pansala by the Defendants ?

A. All these buildings are old buildings.

Q. There are no new buildings ?

A. Only the new buildings in these premises are the Sanghika buildings and the hall where the priests take their meals.

Those buildings were also renovated by repairs effected to existing old buildings. The hall where the priests take their meals is also situated inside the Meda Pansala.

Q. Do you know what is called the Morathota Pansala ?

A. That is this Pansala.

10

(To Court :—

Q. When you first came to know this Meda Pansala did the structure consist of the same number of buildings as it exists now or did it consist of more ?

A. These rooms were there from the time I knew. After the Sanghika buildings were put the buildings increased).

Q. Who put up the Sanghika buildings ?

A. Parusala.

Those buildings which were put up later are also part of the Meda Pansala being renovations to old buildings. The buildings that were put up by Parusala belong to Parusala and those buildings which were put up by Parusala are in the occupation of his pupils.

Why should we obtain the permission of the Sabha for putting up the Meda Pansala ?

There was a Pansala built by Morathota.

I do not know if in the course of time other buildings were put up round it.

It is not correct to say that the original building of the Meda Pansala began to bear that name because it was surrounded by latest structures which were put up round it.

Q. By Pansala you mean the building in which the priest lives ? 30

A. The land adjoining the Pansala is not part of the Pansala just as the land which adjoins this Court-house does not form part of the Court-house ; but if a portion of land is separate and reserved for the use of the Pansala it will be regarded as the property of the Pansala.

(Sgd.) G. C. THAMBYAH,
District Judge.

Adjourned for lunch.

After lunch.

AMUNUAGAMA RATANAPALA, recalled, affirmed.

(The witness is recalled. He will be examined and cross-examined on all matters on which the witness is competent to give oral evidence.

No. 20.
Plaintiffs
further evidence.
Ratanapala
(recalled)—Ex-
amination.

As regards the document which Counsel for the Plaintiffs sought to produce through this witness, I indicate to him that those documents can be tendered by him as Counsel for the Plaintiffs, after the question of their admissibility is decided by the Court).

Q. Do you know Hippola Pansala?

A. Yes.

10 Q. You also know the Rambukwella Pansala?

A. Yes.

Q. In relation to the Hippola Pansala how is the Rambukwella Pansala situated?

A. The Hippola Pansala is towards the Poyage and Rambukwella Pansala is above that. Hippola Pansala is to the East of the Poyage.

Q. On which side of Meda Pansala is Hippola Pansala?

A. That is also to the East of the Meda Pansala.

Rambukwella Pansala is also to the East.

Q. You know the Bothota Dewamitta?

20 A. Yes.

Q. You know where he is living now?

A. Yes.

Q. Where?

A. He is at Malwatte.

Q. You know the Pansala in which he is living?

A. Yes.

Q. In relation to that building in which Bothota Dewamitta is living on which side are the buildings in which the Defendants live?

A. Dewamitta is also living in a part of Meda Pansala.

30 The Defendants are occupying houses lying to the East of Dewamitta's house, that is Lot 3.

Q. Do you know the land which is known as "Keyt's bungalow"?

A. Yes.

No. 26.
Plaintiffs'
further evidence.
Ratanapala
(recalled)—
Examination—
Continued.

Q. Where is it situated?

A. That is Meda Pansala land. These buildings are on Meda Pansala land.

(To Court :—

Q. How do you know that?

A. I know from the deeds.)

Q. What is the Eastern boundary of that land?

A. The Rambukwella Pansala and the Hippola Pansala.

Q. What is the Southern boundary?

A. Below the road leading to Hillwood.

10

The Western boundary is that side of the Poyamaluwa.

It belongs to the Meda Pansala.

Q. What is the Northern boundary?

A. It is Victoria Drive.

Ratanapala
(recalled)—
Cross-
examination.

Cross-examined—

Q. How old were you when you joined the priesthood?

A. I was about 11 or 12 years old when I was robed.

Q. All your time as a priest you have lived at Degaldoruwa?

A. Yes.

Q. You have at no time lived in any premises in the Malwatte Vihare? 20

A. No.

Q. Therefore, you have no personal knowledge of any Pansala in the Malwatte Vihare?

A. I know, I have come with my tutor.

Q. Your tutor is the 1st Plaintiff?

A. Yes.

Q. Your knowledge of Meda Pansala is confined to what your tutor the 1st Plaintiff told you?

A. Yes.

Q. When you undertook in examination-in-chief to give boundaries 30 in Meda Pansala it was entirely hearsay?

A. No, I got it from documents.

Q. What are the documents you referred to?

A. I have taken the deeds from the adjoining lands and I have referred to the boundaries there.

Q. You made a critical study of the boundaries of the Meda Pansala ?

A. Yes.

Q. It is those conclusions that you stated in examination-in-chief.

A. Yes.

Q. You spoke of the Poyage and the Sanghika buildings being the Northern boundary of the Meda Pansala ?

A. Yes.

Q. You said that those Sanghika buildings were to the North of the Poyage ?

10 *A.* There are Sanghika buildings towards the lakeside also.

(To Court :—

Q. With reference to the Poyage where are the Sanghika buildings ?

A. To the South).

Q. They are now to the North ?

A. According to the documents, to the North are the Sanghika buildings. The Sanghika buildings are to the North of the Poyage.

Q. All of them ?

A. Yes.

Q. What are the Sanghika buildings used for ?

20 *A.* For the members of the priesthood to stay there.

Q. Is it for any particular sect of priests ?

A. These priests who come from the 4 corners of the earth.

(To Court :—

Q. Is it only for members of the Siamese sect ?

A. It is used as a residence for all priests to whatever sect they may belong).

Q. Those Sanghika buildings are all outside the Meda Pansala premises ?

A. They are within the Meda Pansala to the North of the Poyage.

30 *Q.* Does the Poyage too stands on the Meda Pansala premises ?

A. This side of the Poyage premises the " maluwa " belongs to Meda Pansala.

Q. Who built those Sanghika buildings ?

A. I do not know .

No. 20.
Plaintiffs'
further evidence.
Ratanapala
(recalled)—
Cross-examination—Continued.

No. 20,
Plaintiffs'
further evidence.
Ratanapala
(recalled)—
Cross-examination—*Continued.*

Q. Rambukwella Pansala is to the East of what you call the Meda Pansala?

A. Yes.

Q. The same wall in fact?

A. Yes.

(To Court :—

Q. Under the same roof?

A. No, not the same roof).

Shown Plan.

Q. In the inset is depicted the whole of Malwatte premises according to a Government plan of 1863?

A. Yes.

Q. You said that all that land that is covered there belongs to the Malwatte Vihare?

A. Yes.

(The witness points out to the Poyamaluwa where the Mahanayake resides).

(Mr. Weerasooriya states that Lot 2 edged in yellow is what the Defendants say is the Meda Pansala).

Q. Have you been there?

20

A. Yes, since about 8 or 9 years' time I have been there.

Q. There are cubicles there?

A. Yes.

Q. Various priests reside in those Pansalas?

A. Yes.

Q. When you go to Malwatte Vihare you would go to Meda Pansala to see some priests residing there?

A. Yes, I go there with my tutor.

At that time there was Seelaratana priest whom we went to see.

Q. When did Seelaratana priest die?

30

A. After I was ordained.

Q. How long ago were you ordained?

A. Now it is nine years. Within a year or two after my ordination he died.

Q. For the last 7 or 8 years you have not gone there?

A. Yes.

Q. You have at no time visited priests living in 1, 3, 4, 5 and 6?

(To Court :—

Q. You only went to see Seelaratana and not his other pupils?

A. Yes.

Q. Seelaratana was living in Lot 2 then?

A. He was occupying the chief room in the Meda Pansala).

Q. What is that chief room?

10 A. His residence was in Lot 2.

Q. Will you admit that Lot 2 is by far the oldest building on the site?

A. All are old buildings.

(To Court :—

When you say the entire Meda Pansala, all those buildings are old).

Shown Plan :

Q. You see Lot 2?

A. Yes.

Q. To the South-east the open courtyard?

A. Yes.

20 Q. There are buildings to the East of that and to the South?

A. Yes, there are large rooms.

Q. Particular priests have keys to those rooms and occupy them?

A. Yes.

Q. When you went there last, can you say who was occupying the room in Lot 5?

A. Parusala's pupils lived there.

(To Court :—

Q. Who are they?

A. The four Defendants).

30 Q. On which side of the Meda Pansala is the Hippola Pansala?

A. To the East. The Rambukwella Pansala is also to the East of Meda Pansala.

(Sgd.) G. C. THAMBYAH,
D.J.

Mr. AMERASEKERA closes Plaintiff's case reserving to himself the right to call evidence in rebuttal on the question of the amount of compensation.

No. 20.
Plaintiffs'
further evidence.
Ratanapala
(recalled)—
Cross-examination—*Continued.*

Defendant's Further Evidence.

Mr. OBEYESEKFRE calls :—

A. M. SPAAR, sworn.

Q. You are the Mayor of Kandy now ?

A. Yes.

Q. You are the Retired Superintendent of Minor Works, Kandy District ?

A. Yes.

Q. A Commission issued to you in this case on the 16th of November, 1937 ? 10

(Commission read to witness).

A. Yes.

Q. In reply to that you informed the Court on the 13th November, 1937 ?

A. Yes.

(Commission dated 16th of November, 1937, read to witness. Letter dated 13th of November, 1937, read to witness).

Q. Have you seen Mr. Spencer's plan dated 20th February and 16th July, 1938 ? 20

A. Yes.

Shown Plan—

Q. Thereafter you inset the buildings ?

A. Yes.

Q. Then you wrote to the Court on the 13th of September, 1938 ?

A. Yes.

(Letter read to witness).

Q. The Defendants stated that only Lot 2 was Meda Pansala ?

A. Yes.

Q. What do you mean by saying that they made no claim to the other 30 buildings ?

By other buildings there you mean 7, 8, 9 and 10 ?

A. No.

I think it was in reference to 3, 4, 5 and the other buildings. There is a definite curve at the end of No. 2.

Q. Although on the Plan Lots 2 and 3 may appear to be one building, when you excavated the boundary between this you found a curve indicating that 3 was a different and a later building?

A. The curve was the edge of the verandah which abutted on the Western side of Lot 2.

Q. Did you make similar excavations as regards 4, 5 and 6?

A. No.

10 Q. Which would you say was the older building?

A. No. 2 I should say was the oldest.

In Lot 6 it is mixed up—new and old; there are distinct signs of new work on 2 also.

Q. Did you see any old work in No. 5?

A. Yes.

They were agreed on that too that that was a part of the Meda Pansala.
(To Court :—

Q. You valued the cost of that building as it stood?

A. Yes.)

20 Q. The tiles of one section are different from the tiles of another?

I now find that the report made by Mr. Spaar relates only to the value of the buildings in Lot 2. He has not valued separately the cost of any additions or improvements to the older existing buildings on Lot 2. He is now commissioned to value those improvements and additions as best he could by a careful inspection of the buildings and furnish to this Court a report showing the value of the improvements as estimated by him. He is also directed to value the buildings standing on Lots 1 and 4 and also to value the buildings on Lot 5 and also to give a separate valuation of any improvements or additions made to the older existing building on Lot 5.

30 Mr. Spaar is directed by me to carry out the directions of the Court now given. No Commission will, therefore, be issued to him but Proctors for the 1st, 2nd, 3rd and 4th Defendants will pay him the necessary fees and file in Court his receipt on the 6th of September.

The return to the commission will be made on the 19th of September.

The cross-examination of Mr. Spaar will be continued after he has furnished the Court with the necessary report as indicated in my order.

Further hearing for 16th and 23rd September, 1940.

(Sgd.) G. C. THAMBYAH,

D. J.

No. 21.
Defendant's
further evidence.
Spaar—
Examination—
Continued.

Counsel as before—

A petition is presented by a person named Don Siddhartha Thero. He is not present in Court nor is there any application by him to be added as a party. Any order or Decree entered in this case will not be binding upon him. I, therefore, merely file this petition and take no further action on it.

Mr. Amarasekera draws my attention to All India Reports, 1916, at page 5 and states that in view of this Judgment of the Privy Council, he consents to the objection with regard to the admissibility of Deeds Nos. 244425 of the 6th of October, 1866 and 23698 of 17th March, 1865, being upheld.

These documents will, therefore, not be admitted in evidence being 10 inadmissible.

Mr. Amarasekera moves to close his case.

Mr. Obeyesekere moves to amend paragraph 1 of the statement of the 3rd and 4th Defendants dated 29th August, 1940, by substituting in line 5, of paragraph 1, in place of the words "pupil of" the words following "in the pupillary succession of Saranankara Sangharaja."

Mr. Amarasekera not objecting, the amendment is allowed. Let the amendment be fair written in the pleading filed.

(Sgd.) G. C. THAMBYAH,

Mr. OBEYESEKERE calls :—

D.J. 20

Sri Dheera-
nanda—
Examination.

HERAMITIGALA SRI DHEERANANDA NAYAKE, affirmed, 65 years, of Malwatte Pansala.

Q. You were in the charge of the Sasthralankara Pirivena at Heramitigala?

A. Yes.

Q. Where is Heramitigala?

A. Near Kadugannawa.

Q. You are also the Secretary of the Karaka Sabha of Malwatte Vihare and a member too?

30

A. Yes.

Q. How long have you been Secretary of that Chapter?

A. 16 years.

Q. You now reside at Malwatte?

A. Yes.

Q. When did you first come to Malwatte?

A. When I was 12 years of age.

Q. You were then a Samanera priest?

A. Yes.

Q. What were you doing at Malwatte Vihare at that age?

A. I was learning.

Q. Who was your teacher?

A. Thalwatte Mahanaga Seelananda Thero.

Q. How long did you remain at Malwatte?

A. For about 52 or 53 years.

Q. Have you been there continuously during that period?

10 *A.* Yes.

Q. Do you have a Pansala yourself at Malwatte Vihare?

A. Yes.

Q. What is that Pansala?

A. It is called Heramitigala Pansala.

Q. Who built that Pansala?

A. The old portion was built by me and the addition was built at the expense of one of my pupils.

Q. How long ago did you build the older portion?

A. About 30 years since.

20 *Q.* That older portion consists of how many rooms?

A. Of 3 rooms.

Q. Under what right did you build that?

A. As I was a member of the Chapter at the time, the Thibbotuwawe Mahanayake got me the sanction of the Mahanayake to build.

That was the then Mahanayake at the time.

Q. That Pansala is at the very corner of the Malwatte premises near the Supreme Court Judge's bungalow?

A. Yes.

Q. To whom will Heramitigala Pansala pass after you?

30 *A.* To one of my pupils.

Q. It will be to the pupil who succeeds you?

A. Yes.

No. 21.
Defendants'
further evidence.
Sri Dheera-
nanda—
Examination—
Continued.

No. 21.
Defendants'
further evidence.
Sri Dheera-
nanda—
Examination—
Continued.

Q. Do you remember Parusala?

A. Yes, I know him.

Q. He was alive when you first came to Malwatte Vihare?

A. Yes.

Q. Do you know what is known as Meda Pansala?

A. Yes.

Q. What according to you is the Meda Pansala?

A. That was the Pansala where Morathota priest resided and there are new rooms built all round it.

Therefore, this Pansala is called the Meda Pansala. The Pansala where 10 Morathota is said to have lived is known as the Meda Pansala, there being other rooms built round it since. This Pansala came to be known as Meda Pansala.

Q. This Pansala in which Morathota is said to have lived what did it consist of when you came to Malwatte Vihare 52 years ago?

A. At that time that Pansala consisted of 3 rooms, 2 big rooms and a small one.

Q. Did it have a separate bathroom or lavatory attached to those rooms?

A. There was a closet, it was near the verandah.

Q. Specially serving what you call the Morathota Pansala? 20

A. Yes.

Q. When you came to Malwatte, who was occupying that Pansala?

A. Parusala was in one room and in the other room was Akwatte, a pupil of Parusala, and in the 3rd room was Yatirawana Seelaratne. He was a pupil of Parusala.

Shown Plan—

Q. You see certain buildings of the Malwatte premises depicted here? This is the Victoria Drive and there is a road going up that way (witness points out to the Poyage).

Q. Given those, can you say what is this Morathota Pansala which 30 you speak of?

(He points out Lot 2 in plan as being the Pansala which was said to have been occupied by Morathota).

Q. What is there between Morathota Pansala and the Poyage?

(Witness points out to Lot 1 and states that that was what Parusala built).

Q. When did he build that?

A. After I came to Malwatte.

I remember it being built.

Q. Are there any pillars there?

A. There are wooden posts.

(To Court :—

They are in Lot 1 along the pillars in the verandah).

Q. What is there to the South of this Morathota Pansala of which you have been speaking of?

10 *A.* The Pansala of Mahalle priest.

Q. Can you point out what you said is the Mahalle priest's temple?

(Witness points out Lot 6 as the Pansala of Mahalle). Mahalle was residing in that.

Q. What is there to the South of Morathota Pansala?

(The witness points out to Lots 4 and 5 and the open ground by the side of the Lots 4 and 5).

Q. What you described as the Mahalle priest's Pansala was it in existence when you came to Malwatte?

20 *A.* The old portion was in existence. When I came to live on these premises, the Mahalle priest's Pansala was in existence. That was the old portion of Mahalle priest's residence.

(Witness points to Lot 5 as that portion).

Q. To your knowledge, was anything done to that portion?

A. I know that Parusala priest repaired it. He removed all the rotten timber and replaced it with new timber.

Q. You also pointed to Lot 4?

A. Yes.

Q. Was that in existence when you came?

30 *A.* No, that was not in existence. There was the open space. Now there is a building on Lot 4.

Q. Do you know who built that?

A. Parusala Nayake priest built it.

Q. Do you know what pupillary rights Parusala claimed?

A. I have heard.

No. 21.
Defendants'
further evidence.
Sri Dheera-
nanda—
Examination—
Continued.

No. 21.
Defendants'
further evidence.
Sri Dheera-
nanda—
Examination—
Continued.

(Shown Lot 4 in Plan—

Q. Do the priests refer to it by any name?

A. The land belonged to Parusala's pupil Mahalle.

(To Court :—

Q. You know personally that Parusala built on Lot 4, which was an open land when he went into it?

A. Yes, he improved on Lot 5).

Sri Dheera-
nanda—Cross-
examination.

Cross-examined (by Mr. AMARASEKERA).

Q. You gave evidence in the earlier proceedings in this case for the Defendants?

10

A. Yes.

Q. Akwatte Dewamitta is the pupil of Parusala?

A. This present Akwatte Dewamitta Unnanse (3rd Defendant) his tutor also was Akwatte Dewamitta and his tutor was Paruasla.

Q. You know the rooms that were occupied by the 3rd Defendant?

A. I know the room occupied by the 3rd Defendant Akwatte Dewamitta.

(Shown Plan—

Q. Please point out the rooms claimed by the 3rd Defendant? (3rd Defendant is called in)

20

A. There are 3 rooms in Lot 2. This priest is residing in the room which was occupied by Parusala.

(To Court :—

It is the Western room in Lot 2).

Q. Who occupies the middle room in Lot 2?

A. No one is residing in the middle room. It is used as a library.

Q. The other room?

A. I think the Eastern room is occupied by Waharaka Unnanse. Sometimes he may be occupying it. I did not go to that room for a very long time.

Q. How long did you not go to that room?

30

A. For about 4 or 5 years.

Q. Prior to that, it was the 2nd Defendant who was occupying that room?

A. No. At that time I know Akwatte Dewamitta was in occupation. Akwatte Dewamitta went to Parusala's Mulgedera. After that I think Waharaka got into that room.

Q. In the Meda Pansala, so far as you know, only the 2nd and 3rd Defendants are living?

A. Yes.

Q. Who is now living in Mahalle's old temple—Lot 5?

A. Madugalle and there is a priest called Sobhitha in Lot 5.

Q. Madugalle you referred to is Madugalle Seelawansa, who is the 4th Defendant?

A. Yes.

Q. Sobhitha is not a party to these proceedings?

10 *A.* Yes.

Q. Who is occupying Lot 4?

A. It is a hall.

Q. Used by whom?

A. By all?

Q. Occupants of 2 as well as the occupants of 5?

A. Yes The visitors also make use of it.

(To Court:—

It is a common room).

20 *Q.* Between Lot 2 and the Poyage are the buildings known as the Sanghika buildings?

A. Those are not called Sanghika buildings. The whole of Malwatte is all Sanghika property. There are 3 rooms by the name of Sanghika buildings. They are separate.

Q. These buildings have existed for a very long time?

A. No, they were put up during my time.

(Witness points out and says that the Western half of Lot 1 was there when he came to the temple but the Eastern half, which is immediately below the Poyage, was built after he came).

Q. You cannot say who built the Western half of Lot 1?

30 *A.* I cannot say. There are 2 rooms.

Q. The Eastern portion was built by Parusala according to you.

A. Yes. The portion where there are posts was built by Parusala.

Q. When you came to the temple, Pahamune Mahanayake was already there?

A. Yes.

Q. He has given evidence himself in this case?

A. Yes.

No. 21.
Defendants'
further evidence.
Sri Dheera-
nanda—Cross-
examination—
Continued.

No. 21.
Defendants'
further evidence.
Sri Dhccra-
nanda—Cross-
examination—
Continued.

Q. He also says that Lot 1 was repaired and rebuilt by Parusala

A. I do not accept that statement.

(To Court:—

Q. Did you know Parusala?

A. Yes).

Q. How long did you know him?

A. For about 52 or 53 years.

Q. How old are you?

A. 65 years.

(To Court:—

10

Q. When did Parusala die?

A. Parusala died in this Pansala, in this very room.

Q. You knew him until his death?

A. Yes).

Q. You were about 12 years old when you came to the temple?

A. Yes.

Q. So you know Parusala for about 10 years before his death?

A. From the date I came to the temple till his death I knew him very well.

(To Court:—

20

Q. How long ago did you come to the temple?

A. Over 52 years ago).

Q. According to you, the Eastern half of Lot 1 was built after 1890?

A. I cannot say with reference to the year. It was about two years after my coming to the Malwatte Vihare.

Q. You were a Samanera priest at the time?

A. Yes.

Q. Pahamune was an ordained priest?

A. Yes.

Q. You were Thelwatte priest's pupil?

30

A. Yes.

Q. Where did you live at Malwatte?

A. I was residing at Thelwatte priest's temple.

Q. Is that your own?

A. It does not belong to me.

Q. Is that the Pansala near the Judge's bungalow?

A. Yes. It is very close to the Supreme Court Judge's bungalow and the Victoria Drive.

Q. You came to Malwatte at that time merely for the purpose of your education?

10 *A.* Yes. I came from Heramitigala where this present Pirivena is.

Q. How long were you learning under Thelwatte priest?

A. For about 12 years.

Q. Then you went away?

A. No. I remained at Malwatte. I was residing in the room which I was occupying at the time I was studying.

Q. And that room you were occupying till your own temple was built at the expense of your pupil?

A. Yes.

Q. For about 30 years you lived in that room?

20 *A.* Over 30 years.

Q. This new temple of yours was built very recently and it is hardly finished?

A. It is not complete yet. There is still a little work to be done. The Municipality has passed that the building is completed. The whole thing is complete some painting has to be done.

Q. To build that temple you had to obtain the permission of the Nayake priest or the Karaka Sabha?

A. Yes.

30 *Q.* That is permission which you obtained from the present Mahanayake or his predecessor?

A. Tibbutuawe Sri Siddhartha. That is 3 Mahanayakes before the present.

Q. Morathota priest's temple is always known as Meda Pansala?

A. No, it is known as Morathota Pansala.

No. 21.
Defendants'
further evidence.
Sri Dheera-
nanda—Cross-
examination—
Continued.

Q. It was never called Meda Pansala?

A. Since of late it is called Meda Pansala. At the time I came it was known as Meda Pansala.

Q. What it was called before you do not know?

A. I know that it was called Morathota Pansala before that.

Q. You cannot say exactly when it began to be called Meda Pansala?

A. I think that after those rooms round the Pansala were built, it got its name.

(To Court :—

Q. Those rooms were there when you went there? 10

A. Except the Eastern portion of Lot 1 and Lot 4 all the others were there at the time I came).

Q. You only expressed an opinion that No. 2 is called Meda Pansala because there are surrounding temples?

A. Yes.

Q. Do you know that the Mahanayake priest has again given evidence on this point. He says that Moratota priest's temple is called Meda Pansala because it is between the Poyage and Sangharaja priest's temple?

A. He may have said that through forgetfulness, I cannot accept it. There are many other Pansalas. 20

Q. You remember Lot 4 being built?

A. Yes.

Q. You told us that that was the property of Mahalle, High Priest?

A. Yes.

Q. How did he get it?

A. He was living in Lot 5.

Q. How did he become entitled to the land on which it is built?

A. From his tutor Mahalle.

Q. How did Mahalle get it?

A. I do not know. 30

Q. So there are unbuilt lots within the Malwatte premises which belong to various priests?

A. Yes.

Q. How do they get them?

A. They separate and possess these lots.

Q. Lot 4 was a similar portion?

A. Yes.

Q. The building was put by Parusala?

A. Yes.

Q. Parusala at that time used to enjoy all the properties that belonged to Degaldoruwa Vihare?

A. I do not know that.

10 *Q.* Parusala himself was a priest who had large resources.

A. It is said.

Q. You do not know that he was in possession of all the fields and houses that belonged to Degaldoruwa?

A. I do not know that.

Adjourned for lunch.

After lunch.

DEERANANDA THERO, recalled, affirmed, Cross-examination continued—

Q. Do you know Waharaka Sobhitha?

20 *A.* Yes.

Shown Plan

Q. Which room does he occupy?

A. He resides usually at Menik Kumbure Pansala.

(To Court :—

It is at Katugastota).

He does not live at Malwatte. He attends the meetings.

Q. Where did the 2nd Defendant—Waharaka Gunaratne live?

A. He is occupying the smallest room in Lot 2.

Q. Who is occupying Lot 5?

30 *A.* Waharaka Ratnapala. Madugalle Seelawansa occupied Lot 5.

Q. Do you say that all these rooms are called Meda Pansala or Lot 2 alone is called Meda Pansala?

A. Only Lot No. 2 is called Meda Pansala.

No. 21.
Defendants'
further evidence.
Sri Dheera-
nanda—Cross-
examination—
Continued.

No. 21.
Defendants'
further evidence.
Sri Dheera-
nanda—Cross-
examination—
Continued.

Q. The others?

A. Except Lot 2 the others are known by different names.

Q. Who was your tutor?

A. Heramitigala Ratnapala.

He never resided at Degaldoruwa.

Re-examined—

Sri Dheera-
nanda—Re-
examination.

Q. Do you know as a fact that the Malwatte land was gifted by a Singhalese King to the Sangha?

A. Yes.

Q. When you speak of the Sangha there, what do you mean? 10

A. The ordained priests.

Q. That is for the benefit of the batch of priests?

A. Yes. That is Sangha.

Q. You spoke of 2 rooms called Sanghika rooms?

A. There are 3 rooms; they are outside. That is to the West of the Poyage in Plan.

Q. What do you mean by those rooms being Sanghika?

A. Those rooms are set apart for the use of the visitors the Sangha priests who come from other stations.

Q. You say in your own case you had the permission of the Chapter 20 to build a Pansala some years ago?

A. Yes.

Q. That Pansala would also be Sanghika?

A. Yes.

Q. But in a different sense it goes to your pupil?

A. Yes.

Q. You said that various priests separated small blocks in the Malwatte premises and possessed those blocks?

A. Yes.

Q. Did they have to get anybody's permission to do that? 30

A. The land is given to the Chief High Priest; that is the others will have to get those lots from the descendants of that Sangaraja.

Q. That will be from the Mahanayake in power and the Karaka Sabha?

A. That is to get that land they have to get permission from the Sangaraja and the Chapter originally.

(To Court :—

There are two Mahanayakes—for Malwatte one and the other for Asgiriya and the Sangaraja is for the whole Island).

Q. After the Sangaraja became extinct, who gives the authority?

A. It is the Sangha Sabha of which the Mahanayake is the head.

Q. For the building on the Malwatte premises the Mahanayake of 10 Malwatte will be the authority?

A. The Chief High Priest cannot give authority. It is the Sangha Sabha.

(Sgd.) G. C. THAMBYAH,
D.J.

RAMBUKWELLA DHARMARAKKHITA SOBHITHA, affirmed, 73 Sobhitha—
years, Anunayake of Malwatte Vihare. Examination.

Q. As Anunayake you are next in order to the Mahanayake?

A. Yes.

Q. If he is unable to carry out any particular duties you would deputise 20 for him?

A. Yes.

Q. In fact, in the event of his death you act until a successor is appointed?

A. Yes.

Q. You reside at the Malwatte Vihare?

A. Yes.

Q. You have your Pansala?

A. Yes. It is called Rambukwella Pansala.

Q. How long have you been residing at Malwatte?

A. About 60 or 62 years.

30 *Q.* You came there then as a boy?

A. Yes.

Q. You received your education there?

A. Yes.

No. 21.
Defendants'
further evidence.
Sri Dheera-
nanda—Re-
examination—
Continued.

No. 21.
Defendants'
further evidence.
Sobbitha—
Examination—
Continued.

Q. Have you got a temple outside Malwatte?

A. Yes.

Q. Where?

A. Kondasale Vihare, Gonawatte Vihare, Hiddawella Vihare.

(To Court :—

I am the incumbent priest for those temples also).

Q. Where do you reside for the most part?

A. At Malwatte.

Q. Are you a member of the Chapter?

A. Yes.

10

Q. For how long?

A. I was appointed to the Sangha Sabha as a member in 1907.

Q. Do you know the Meda Pansala?

A. Yes.

Q. What do you say the Meda Pansala consists of?

A. Morathota Priest's Pansala is the Meda Pansala.

Q. How many rooms does it consist of?

A. It has three rooms.

Q. When you came to Malwatte who was living there?

A. Parusala Nayake.

20

Q. Do you know who the successors of Parusala are?

The Defendants in this case are his pupils?

A. Yes.

Q. There are certain temples round Morathota Pansala?

A. Yes.

Q. Do you know the Poyage to the North of the Morathota Pansala?

A. Yes.

Q. Is there a Pansala between that Poyage and the Morathota Pansala?

A. There is a line of rooms built by Parusala priest.

Q. Do you know when they were built?

30

A. Yes.

Q. When you went there as a pupil priest did they exist?

A. No.

Q. They were built by Parusala?

A. Yes.

Q. Are you aware of that personally?

A. Yes. I saw.

Q. Had you anything to do with the buildings yourself?

A. I have, in fact helped.

Q. What was the help you gave when Parusala was building that line
10 of rooms?

A. I gave him some posts, some beams and I helped them in the building.

Q. Can you read a plan?

A. Yes.

Q. Is there a Pansala to the South of the Morathota Pansala?

A. Yes, the row of rooms belonging to the Parusala Nayake.

Q. Why do you say they belong to Parusala Nayake?

A. They belong to Parusala Paramparawa.

Q. That Pansala to the South of Morathota Pansala was in existence
20 when you went there as a pupil priest?

A. Yes.

Q. To your knowledge has Parusala done anything to that building?

A. He replaced the timber.

(To Court :—

The roof timber)

Q. Between the Morathota Pansala and the Pansala which you are now referring to there is an open space?

A. Yes.

Q. On the Eastern side of that open space is there a line of rooms?

30 *A.* Yes, and there is a hall also.

Q. Who built that?

A. The hall was built by Parusala. I do not know who built the rooms.

No. 21.
Defendants'
further evidence.
Sabbitha—
Examination—
Continued.

No. 21.
Defendants'
further evidence.
Sobhitha—
Examination—
Continued.

Q. You were aware of that personally?

A. I have heard and I have seen also.

Q. Now you are speaking of a "sallawa"?

A. Yes.

Q. Can you say which was constructed first?

A. Lot 1 was built before 4.

Q. Did Parusala have any considerable income?

A. Yes.

Cross-examined.

Sobhitha—
Cross-
examination.

Q. He was in possession of the properties that belonged to Degaldoruwa? 10

A. Yes, he had previously.

(To Court:—

Q. What do you mean by previously?

A. There was a case.

Q. Was he the incumbent at Degaldoruwa?

A. I have heard that he belonged to the same "paramparawa").

Q. What is the temple that is to the West of yours?

A. It is called Kabalawita Pansala.

Q. You know the Hippola Temple?

A. Yes. 20

Q. That is to the North of yours?

A. Yes.

Q. In fact, it was one temple at one time?

Rambukwella and Hippola temple?

A. No.

Q. There was no case between Hippola priests and Rambukwella priest?

A. The Hippola people got the Northern and the Rambukwella people the Southern.

Q. You say you supplied timber to Parusala to build Lot 1?

A. Yes. 30

Q. How many beams?

A. I gave him two beams.

Q. From which forest of yours did the timber come?

A. They were in our Pansala. They were in the Rambukwella Pansala.

No. 21.
Defendants'
further evidence.
Sobhitha—
Cross-examination—Continued.

Q. How old were you at the time?

A. I was about 32 or 33 years old.

(To Court :—

Q. At that time you were the incumbent at Rambukwella Pansala?

A. No. At that time my tutor was alive).

Q. How can you give the tutor's things?

10 A. Because I had much help from Parusala priest.

Q. How can you give the tutor's property?

A. With the permission of my tutor.

Q. You say that your tutor supplied some timber?

A. I say that I gave because I gave them personally. I handed them over.

Q. This happened about 33 years ago?

A. Yes.

Q. How old are you?

A. About 73 years.

20 Q. This happened about 40 years ago?

A. Yes.

The roof was built about 2 or 3 years prior. As the rafters put to that roof were not very good and were bending they put a row of posts along the pillar and over that they put the old plate and if anyone inspects that now it can be seen.

(To Court :—

Q. Are the rafters supported by posts from the ground?

A. The portion just near the compound is on a wall plate and the wall is a little further this side).

30 Q. How many years after he put up that building did he build the hall?

A. I cannot say. I think about ten or twelve years.

Q. Certainly a considerable time after?

A. Yes.

No. 21.
Defendants'
further evidence.
Sobhitha—
Cross-examination—Continued.

Q. That must be then about 1910?

A. Before that. We have no record of these things.

Q. You told the Court that you were 33 years of age when you supplied the timber?

A. Yes.

Q. How old were you when the hall was put up?

A. I cannot remember.

Q. Were you 40?

A. I cannot say.

Q. It was a considerable time after Lot 1 was built that the hall was 10 put up?

A. I cannot say.

Q. When did your tutor die?

A. In 1900.

Q. When Lot 1 was being built your tutor was living?

A. I cannot remember.

Q. So that your tutor was not living at the time that the timber was given?

A. At that time my tutor was dead when I gave the timber.

(To Court:—

20

Q. How do you remember the year of the death of your tutor?

A. I can remember that well. Yearly I make offerings and have Pinkamas in remembrance of my tutor).

Q. It was after that the timber was given?

A. Yes.

Q. How long after your tutor's death?

A. I cannot remember.

Q. The hall was built after Lot 1?

A. I cannot remember even that.

Q. How long after your tutor did Parusala die?

30

A. I think about two or three years later.

(Sgd.) G. C. THAMBYAH,
D.J.

AKWATTE DEWAMITTA, affirmed, about 57 or 58 years of Malwatte Vihare.

No. 21.
Defendants'
further evidence.
Dewamitta—
Examination.

Q. You are the third Defendant in this case?

A. Yes.

I belong to Parusala Nayake's "Paramparawa."

Q. Do all the Defendants belong to that "Paramparawa"?

A. Yes.

Q. Who was Parusala's tutor?

A. Mahalle priest.

10 *Q.* And Mahalle's tutor?

A. Aehelle.

Q. And his tutor?

A. Attaragama priest.

Q. Whose pupil was he?

A. He was a pupil of Sangaraja.

Q. Sangaraja priest had several pupils?

A. Yes.

Cross-examined.

Q. In your answer you value Meda Pansala to Rs. 20,000?

20 *A.* No one assessed it. We ourselves did that.

Dewamitta—
Cross-examination.

Q. In paragraph 7 of your answer you and the 4th Defendant value the Meda Pansala at Rs. 20,000?

A. Yes.

Q. You say that Lot 2 in the plan is Meda Pansala?

A. Yes.

Q. To put up a building like that there is a record by Mr. Spaar that one need not spend more than Rs. 3,000?

A. Yes. I know that.

Q. Then why did you say Rs. 20,000?

30 *A.* It is in our possession for 80 or 90 years past.

We have given our own valuation.

No. 21.
Defendants'
further evidence.
Dewamitta—
Cross-examination—*Continued.*

Q. Who are the "we"?

A. The Defendants—we all got together and gave the value.
(Paragraph 8 of the answer referred to).

Q. The actual value must be more than Rs. 20,000?

A. It ought to be over Rs. 20,000 but we have put down our valuation.

(To Court :

Q. Why Rs. 20,000 for three little rooms?

A. Because we possessed it for 80 or 90 years.

It is worth so much to us.

10

Q. It is a sentimental value?

A. Yes.)

Q. Was any part of Lot 2 built by you or your tutor?

A. My tutor built.

Q. Who is your tutor?

A. Parusala Nayake.

Q. Parusala has built Lot 2?

A. Yes, Lot 2 has been built by Parusala.

Q. Which side of it?

A. When the building by Sinhalese Kings the walls were of wattle-and-
daub, Parusala pulled down the walls and built it with granite stones. 20

Q. The entire building was renovated by Parusala?

A. Yes.

(To Court :—

Q. It is the same granite building that is standing there now?

A. Yes.)

(Answer of 3rd and 4th Defendants paragraph 8 read to witness)

The small portion means the foundation put by the Sinhalese Kings.

Q. By the small portion you mean the foundation of Lot 2?

A. Yes.

30

(To Court :

Q. You cannot build on foundation which was meant for wattle-and-
daub with granite?

A. Yes, we pulled down the wattle-and-daub walls and built.

Q. You said the small part of the buildings now constituting Meda Pansala?)

No. 21.
Defendants'
further evidence.
Dewamitta—
Cross-examination—Continued.

Q. How much did Parusala spend in renovating Lot 2?

A. I think he may have spent about Rs. 15,000.

Q. What is the extent of the land appertaining to the Meda Pansala?

A. I do not know.

Q. There is no land appertaining to the Meda Pansala?

A. No.

Q. Here is a deed by which your tutor Parusala got the Meda Pansala.
10 Shown Deed P₂.—

Q. This is a deed of 1849 by which Ratanapala gave the Meda Pansala among others to Parusala?

There it is said that the land appertaining to the Meda Pansala is one amunam in extent.

(Read Deed P₃)

A. I do not believe that deed.

Q. This is the very deed by which Parusala claimed Meda Pansala in this Court?

A. I do not believe the deeds.

20 Q. You do not believe the deed given by Parusala to Ratanapala?

A. No.

Q. How do you say Parusala got Meda Pansala?

A. Mahalle Pansala and Meda Pansala were adjoining. Parusala and also Mahalle lived either in this Pansala or in the other one.

Q. How does Parusala claim Meda Pansala? Through whom does he claim that?

A. Parusala was ordained together with Paranathala. Through Morathota he had the right to this.

30 Q. Therefore, it is right to say that he claimed on a deed given to him by Paranathala?

A. I do not know about the deed. I do not know how one could give a deed for Malwatte Vihare.

(Deed P₄ read).

(Sgd.) G. C. THAMBYAH,
D.J.

No. 21.
Defendants'
further evidence.
Dewamitta—
Cross-examination—Continued.

Mr. OBEYESEKERE states that he had no further evidence to call in the case except the evidence of Mr. Spaar.

I shall inspect the premises on Tuesday, the 1st of October, 9 a.m. in the presence of the parties with their Counsel and Proctors.

Call case on the 30th of September to arrange for the inspection, the next morning.

(Sgd.) G. C. THAMBYAH,
D.J.

19th October, 1940.

Spaar—
Examination.

Mr. Advocate AMARASEKERE with Mr. GUNAWARDENA, 10 instructed by Mr. VANDERWALL for the Plaintiffs.

Mr. Advocate ARTHUR PERERA, instructed by Mr. GURUSWAMY and Mr. RATNAYAKE for the Defendants.

Mr. Advocate PERERA calls:—

A. M. SPAAR, Sworn 63 years.

Shown Ground Plan—

Q. Are there traces of the old building on Lot 2?

A. Yes.

Q. Have you valued them separately?

A. From my estimate I can pick out those items and give you the 20 valuations.

Q. What would you estimate the cost of the new additions on Lot 2?

A. With reference to my report dated 13th September, 1938, I point to the following items as being new additions. It is very difficult to say.

The centre walls are of recent construction. I point to what I consider to be the more recent additions. I must state, however, that it is very difficult to state whether the walls now standing in the buildings in Lot 2 are the walls of the ancient building or whether they were constructed or renovated during recent times.

Q. Looking at Lot 2 as a whole, can you say what proportion looks like 30 the old building?

A. All the Kandyan frame and the doors look old with the exception that they had put in panel and glazed shutters, which are of new construction.

Q. You spoke of Kandyan panels? In the olden times only the King had the right to have bricks?

A. I felt that a good deal of it during the old Kandyan times was built of wattle-and-daub.

(To Court:—

The walls of the present buildings are stone—random rubble stone).

My experience is that the old buildings were mud-and-wattle.

I have come across buildings in stone work.

No. 21.
Defendants'
further evidence.
Spaar—
Examination—
Continued.

Q. When you look at Lot 2 is there an appearance whether any portion has been added to it?

A. Yes. The portions which I mark in Lot 2 and the portion which lies to the East of the line, which I have now drawn in red pencil appears to me to have been added on later.

(To Court:—

10 I cannot say when the addition was made).

I am also of opinion that the walls shown in red being the Southern wall of the buildings in Lot No. 2 also appear to be more recent.

The building marked “5” appears to be older than the rest of the buildings. Lot 5 is of wattle-and-daub and the roof is supported by wooden pillars as in the case of old buildings. The wattle-and-daub structure of the wall and the wooden pillars supporting the roof indicate that those buildings are fairly ancient. Lot 5 has also recent additions.

(To Court:—

Q. What are those?

20 *A.* The Southern and the Northern walls which are of wattle-and-daub and random rubble respectively, appear to be old. The Cross-partition walls which are of brick and mortar are more recent. So, too, the Lunumidila ceiling and the stone paving of the floor appear to be more recent).

Q. Will you kindly say whether the additions to Lot 5 are approximately of the same age and of the same kind as the additions to Lot 2?

A. The windows in Lot 5 appear to be more modern and are of the more recent type. Both the shutters as well as the frames. The pillars supporting the verandah roof appear to be comparatively more recent, perhaps 30 or 40 years old. The roof of the verandah is partly new and partly old.
30 I make this out from the difference in the age and the type of the rafters supporting the roof of different portions of the verandah.

(To Court:—

The difference is that they are narrow and wider).

Q. Lots 3 and 6 are two Pansalas which are claimed by certain priests who are not parties to this action?

Q. Four connects Lots 2 and 5?

A. Yes.

No. 21.
Defendants'
further evidence, marked
Spaar—
Examination—
Continued.

Q. There is a little platform connecting Lots 4 and 6 across what is marked "open"?

A. From 6 you can come to 4.

Q. Lot 4 is a modern building compared to 2 and 5?

A. With the exception of 5 Kandyan posts and a Kandyan door and frame at the entrance.

Q. It is not unusual when you are putting up a new building to make use of old pillars and door frames?

A. Yes.

(The witness marks the old pillars with the distinguishing figure of 4). 10

The building on Lot 4 appears to be recent.

Q. Can you say the approximate age of Lot 4?

A. I think it is about 30 years.

Q. The Poyage is surrounded with little cubicles right round?

A. Yes.

Q. Lot 1 is a continuation of those buildings right round?

A. The Poyage is surrounded by a line of buildings on three sides and a portion of the 4th.

Q. Lot 1 is a continuation of these buildings?

A. As the building on Lot 1 now stands, it appears to be in a line with 20 the other buildings which surround the Poyage.

The building marked "1" appears to be recent consisting of brick nine-inch walls, modern doors and door frames and the roof being modern design.

Q. The extreme end of Lot 1 is claimed by some other priest?

A. The extreme Eastern portion of Lot 1 is exclusively claimed by a priest.

Q. Would you have observed of the buildings right round the Poyage that some portions of it are old?

A. I did not examine them.

Q. What is the age of Lot 1? 30

A. The structure of the building in Lot 1 seems to be older than the building in Lot 4. It is difficult to estimate the age of that building but it may probably be about 40 years old. The tiles on the roof of the building in Lot 1 are half round tiles and not the ancient type of Kandyan tiles. I have valued in my report the cost of building Lots 1 and 4 (the witness is directed with reference to the estimate submitted by him along with his report

of the 13th of September, 1938, to put a blue circle against such of the item shown in that estimate which in his opinion are recent additions or improvements to the existing building.

No. 21.
Defendants'
further evidence.
Spaar—
Examination—
Continued.

The witness is directed to put both a blue and red circle against such of the items which he considers to be partly old and partly new. The various items in the valuation attached to the report of 13th September, 1940, are serially numbered one to twenty?)

Item No. 2 may be either old or new.

Item No. 3 may be old or new.

10 Item Nos. 4 and 5 may be old and new.

Item No. 6 is new.

Item No. 7 is new.

Item No. 8 is old.

Item No. 9 is new.

Item No. 10 is old.

Item No. 11 may be old and new.

Item No. 12 is new.

Item No. 13 is new.

Item No. 14 is new.

20 Item No. 15 is old.

Items Nos. 16, 17, 18, 19 and 20 are old.

In No. 18 you will find glazed shutters of a modern type. I estimate the value of the glazed door at Rs. 15.

With reference to the building No. 5, the newer portions are indicated by letter "N" placed against those items. I have indicated that the random rubble masonry towards the back of this building is more recent in comparison with the wattle-and-daub walls which are on the front of this building.

In view of my having found just a few old rafters of the ancient Kandyan type in the roof I have considered that the roof of this building is more recent.

30 *Cross-examined* (Mr. AMARASEKERA.)

Q. Section 2 in your report refers to a part of Lot 1 which is claimed by some other priests and is not claimed by priests who are parties to this action?

Spaar—
Cross-
examination.

(Mr. PERERA states that his clients do not claim any compensation for the portion of the building marked "1" which lies to the East of the dividing red line showing the two sections which the witness now marks out on his plan in view of the fact that that portion of the building is claimed by some other priests.)

No. 21.
Defendants'
further evidence. the
Spaar—
Cross-examin-
ation.—Continued.

Q. Is the curve that is shown on the Western part of 1 continued to the very end?

A. There is a curve on both the Eastern and the Western sections of

Lot 1.

Q. Lot No. 1 and Lot No. 4 are not of the same age?

A. In my opinion the Western section of Lot 1 is much older than Lot 4.

Q. What is the foundation on which the Western portion rests?

A. Random rubble, which is the usual foundation even in ancient buildings in Kandy.

Q. The foundation in Lot 4 is also the same?

10

A. Yes, it is also random rubbles.

Q. The superstructure seems to be recent or modern?

A. Yes.

Q. You estimate the age of that building to be about 30 years?

A. Yes.

Q. In Lot 4, there is one room and a big hall?

A. Lot 4 is one hall. (This was referred to as the common room in the evidence).

The foundation in Lot 2 is the usual type of foundation. The foundation is random rubble and the walls too are random rubble. There is no wattle- 20 and-daub anywhere.

Q. In all the three buildings (1, 2 and 4) the foundation is of the same material, namely random rubble?

A. Yes.

Q. You did not dig the foundation of Lot 5?

A. I dug up the foundation of the back wall of Lot 5, and found that the foundation is the same as in the other buildings.

Q. In Lot No. 5 there are thin partition walls dividing the entire building into small rooms?

A. Nine-inch walls. The thickest was a bit modern.

30

Q. There is also a verandah attached to No. 5 facing the open space?

A. Yes.

Q. Does not Lot No. 5 appear to be originally a hall?

A. If the partitions are removed it would be one big hall.

Q. As a matter of fact the door frames and the window frames are also new?

A. In Lot 5, all the windows are new.

Q. As a matter of fact, the age of the partition seems to be about the same as the age of building No. 4?

A. Yes.

Q. In your report, you have given only what the costs of the materials and costs of constructions are?

A. Yes, at the present moment. I have taken into consideration the condition and the nature of the work done. I have given my valuation on the basis of the value of material and costs of labour now prevailing. I cannot say what the costs of these buildings would have been at the time when they were built. The cost of building at the time when these buildings were put up would have been very much cheaper.

Q. You have not assessed the value of the building as it is to-day?

A. It all depends as to what use the building is put to.

(To Court:—

My valuation is based on what I estimate to be the value of the work in that building as the building now stands).

In my valuation I have valued the materials according to the value which I estimated those materials are now worth in their depreciated state. As regards the labour, however, my estimate of the cost of labour is based on modern conditions.

Q. The timber would have been very much cheaper in the days it was put up?

A. Yes.

Even as regards the cost of materials I have estimated their cost according to modern rates allowing no doubt a margin for depreciation on account of the age of the materials. I cannot say what the value of these materials would have been at the time that these buildings were put up.

Re-examined.

Q. If the party in possession sells these buildings and get an estimate made, the value of these buildings would be based on your valuation?

A. It does not necessarily follow.

(Sgd.) G. C. THAMBYAH,
D.J.

Defendant's case closed.

No. 21.
Defendants'
further evidence.
Spaar—
Cross-examination—*Continued.*

No. 22.
Plaintiff's
further evidence
in rebuttal.
Ratanajothi—
Examination.

No. 22.

Plaintiff's further evidence in rebuttal.

Mr. AMARASEKERE calls in rebuttal.

KAHANDE WELIPOTHA RATANAJOTHI, recalled, affirmed, 66 years of Sirimalwatte. I reside at Malwatte.

Q. You knew Parusala Anunayake priest?

A. Yes.

Q. You know these Defendants?

A. Yes.

Q. Some of them are pupils of Parusala?

10

A. Yes.

Q. Parusala was residing at Meda Pansala?

A. Yes.

Q. He died at the Meda Pansala?

Q. Was he in possession of properties belonging to the Meda Pansala?

A. Yes.

Q. Will you name some of those properties?

A. He was in possession of Menikcumbura.

Q. Where is Menikcumbura?

A. It is at Katugastota. It is a valuable property.

20

Q. It is within the Municipality of Kandy?

A. Yes.

Q. How many buildings are there on it?

A. There are about 23 boutiques.

Q. You produce a deed of lease No. 3776 dated 9th January, 1933, executed by the Defendants?

(Mr. AMARASEKERA proposes to prove by the production of certain documentary evidence and otherwise that the Defendants are not entitled to compensation on the footing that the Defendants have been in possession of certain property belonging to the Meda Pansala and that they have appropriated the income from those properties. 30

He, in effect, tries to work a set-off which is not pleaded in any of the pleadings and I, therefore, would disallow any question relating to this mode of set-off.

The witness must confine his evidence only to such evidence as might be regarded as evidence in rebuttal only on the question of the quantum of compensation.

No. 22.
Plaintiff's
further evidence
in rebuttal.
Ratanajothi—
Examination—
Continued.

Mr. Perera states that his clients do not admit that they had been in possession of Menikcumbura as forming part of the property belonging to the Meda Pansala. He claims title to those properties upon an independent title and based also on prescriptive possession.

10 It is difficult for the Court in these proceedings to embark upon an enquiry to ascertain that title to the property called Menikcumbura which it will become necessary to do, before the Court can hold that the Plaintiffs are entitled to claim a set-off against the claim for compensation. I think it will be both unnecessary and impossible to embark upon such an enquiry.

These facts, if relied upon, should really have been pleaded and notice to the other side given in order that they may have been prepared to meet this matter.

I, therefore, disallow evidence with regard to the income derived from Menikcumbura).

(Sgd.) G. C. THAMBYAH,
D.J.

20 The evidence is closed.

Reference was made to the evidence given by Mr. Spencer on a previous occasion regarding the location of the buildings which appeared to have existed as shown in the plan of 1863 with reference to the buildings now existing on the land. This evidence is of great importance and I would like to examine Mr. Spencer further with regard to this matter. Mr. Spencer is not in attendance to-day. Further trial will, therefore, have to be adjourned for some other date.

30 It is also necessary to inspect the site of the Meda Pansala. I desire that Mr. Spencer should also be present at the inspection as he has made the plan and has given evidence with regard to the location of the various buildings. As he is not present to-day I will postpone the inspection also for the date for which the trial is adjourned to hear Mr. Spencer's evidence.

Further hearing is postponed for the 9th of November. If, however, this date does not suit Counsel for the Plaintiff who, I understand, is engaged on that day before another Court, the further hearing will be had on the 16th of November, 1940.

(Sgd.) G. C. THAMBYAH,
D.J.

No. 22.
Plaintiff's
further evidence
in rebuttal.
Spencer—
Examination.

9th November, 1940.

Appearances as before.

Mr. AMARASEKERA calls :—

P. SPENCER, recalled, Sworn, Licensed Surveyor, Kandy.
Shown Plan No. 58891 marked X.

Q. In 1863 there appear to have been certain buildings on these premises?

A. Yes, I have seen the Meda Pansala premises.

Shown Plan.

Q. In your plan you have marked the premises corresponding to the 10 Meda Pansala premises as claimed by the Plaintiffs?

A. Yes.

Q. In the Plan of 1863 do you find buildings there corresponding to those that now exist on the land?

A. Yes. The outline of the building of the 1863 plan corresponds with the outline more or less of the present building claimed by the Plaintiffs and the Defendants. Plaintiffs claim as Meda Pansala but the Defendants claim as various other lots. They correspond to the buildings claimed by the Plaintiffs as Meda Pansala. There are some portions that have been added.

20

In the plan of 1863 there is shown a vacant space where now Lot 3 exists. The portion coloured mauve in the inset in Plan takes in the portion which is left blank in the plan of 1863 and which is represented by the uncoloured portion in that plan and which for purposes of reference is marked "Alpha." The area covered by the portion coloured mauve corresponds to the area of Lots 1, 2, 3, 4, 5 and 6 in my plan except for the additional room coloured pink lying to the South of the portion coloured mauve and which portion falls outside the portion depicted in the plan of 1863 but is included in the buildings claimed to form part of the buildings belonging to the Meda Pansala by the Plaintiffs.

30

Cross-examined.

Spencer—
Cross-examination.

Comparing the Plan of 1863 with my Plan I state that in the site of the buildings which existed in 1863 there now appear buildings in the same size. These buildings may have been renovated or rebuilt. The only difference is that in the vacant space shown in the plan of 1863 there now appears to exist a building and the portion, which has been built upon and is shown to lie to the South of the portion coloured mauve in the inset appears to have been built later as that building does not appear in the old plan of 1863.

(Sgd.) G. C. THAMBYAH, 40
D.J.

Authorities cited by Mr. AMARASEKERA.

5th Volume, Supreme Court Circular, page 61.

25 New Law Reports, page 267 at page 269.

28 New Law Reports, page 140.

1 Current Law Reports, page 233.

13 Law Weekly at page 136, at page 139.

3 New Law Reports, page 380.

I would like to inspect these premises. There will be no time to do so to-day. I shall inspect these premises on the 30th of November, 1940.

10

(Sgd.) G. C. THAMBYAH,
D. J.

30th November, 1940.

Appearances as before—

I wish to inspect the Meda Pansala and all the buildings appertaining thereto and I find that an inspection will be helpful in the decision of the issues involved.

I am informed by Counsel for the parties that there is a big ceremony with regard to the installation of the Anunayake of the Malwatte Chapter this evening. It is not therefore possible for me to inspect the premises to-day.

20

Another date will be fixed, convenient to the Court and to the Counsel and parties will be informed of the date so fixed later.

Call case on the 9th of December to fix a date for inspection.

(Sgd.) G. C. THAMBYAH,
D. J.

14th December, 1940.

I am informed that Mr. Advocate Amarasekera, who appeared for the Plaintiffs is ill, and, therefore, unable to be present at the inspection which is fixed for to-day. As he was Counsel who conducted the case his presence at the inspection would be helpful.

30

As regards the further date to be fixed for this inspection I propose to read through the evidence and if I find that an inspection would be helpful in arriving at a decision or of understanding the evidence better, I shall fix a further date with notice to the Proctors. Meanwhile let the record be sent up to me.

(Sgd.) G. C. THAMBYAH,
D. J.

No. 22.
Plaintiff's
further evidence
in rebuttal
Spencer—
Cross-examin-
ation—Continued.

Judgment of the District Court, Kandy.

JUDGMENT

By the judgment and decree of the Supreme Court on an appeal from the judgment of this Court the decree entered in this case dismissing the Plaintiffs' action was set aside and the case has been sent back for trial on Issues 9, 10 and 11 on which a decision was not given at the first trial.

As would appear from the judgment of the Supreme Court it has been held that the Meda Pansala which is situated in the premises of the Malwatte Vihare in Kandy is an appurtenance of the Degaldoruwa Vihare. By reason 10 of this finding it would appear that the 1st Plaintiff who claims to be the Incumbent of the Degaldoruwa Vihare is entitled as such to the possession of the Meda Pansala which has been found to be an appurtenance of the Degaldoruwa Vihare.

Issues 9, 10 and 11 as framed at the original trial are in the following terms :—

9. Did Parusala and his pupillary successors effect improvements to the said Pansala?
10. If so, what are the costs of such improvements?
11. If the Plaintiffs are held entitled to the premises are Plaintiffs 20 liable to pay Defendants the costs of such improvements and are they entitled to *jus retentionis*?

When the action proceeded to trial for this purpose of determining the questions raised by Issues 9, 10 and 11 it was agreed between the parties that the Court will have to define what the Meda Pansala is and that an issue would have to be framed for the purpose of determining that question.

In view of the omission in the plaint to describe the premises of the Meda Pansala by metes and bounds the difficulty has arisen of having to ascertain the corpus of the Meda Pansala. The parties are not agreed as to the corpus.

The Plaintiffs maintained that the buildings marked 1, 2, 3, 4, 5 and 6 30 and the land shown in the inset edged green in Mr. Spencer's plan represent the Meda Pansala, which is the subject-matter of this action.

This contention is formulated in Issue 13 which was framed by the Court on 2nd June, 1939. Counsel for the Plaintiffs also stated that the buildings marked 7, 8, 9 and 10 in Mr. Spencer's plan are also buildings belonging to the Meda Pansala, but that he does not ask for any relief in respect of these buildings as the rights of parties who are not parties to this

action are involved. After some evidence was led for the purpose of determining the issue it transpired that the Defendants were taking up the position that Lot 2 only is Meda Pansala and that the Defendants claimed title to Lots 1, 4 and 5 upon an independent title which is different to the title which was set up by them in the answers filed. The Court then directed the Defendants to file a statement or pleading setting out in detail the devolution of title claimed in respect of Lots 1, 4 and 5. The Plaintiffs' Counsel also admitted that as regards Lots 3 and 6 and the Lots 7, 8, 9 and 10 which are claimed by persons who are not parties to these proceedings, the investigation of the title to those lots need not be held in these proceedings and that in any declaration which the Court may ultimately make on this question as to what is comprised within the Meda Pansala regard need not be had to the investigation of the title to Lots 3, 6, 7, 8, 9 and 10 without prejudice, however, to the rights of the Plaintiff to vindicate their title to these lots in separate proceedings. Issue 13, therefore, was modified so as to include in it only the Lots 1, 2, 4 and 5. The question regarding compensation for improvements will also therefore be restricted to the claim for compensation in respect of Lots 1, 2, 4 and 5 only, if as a matter of law it is found that the Defendants are entitled to claim such compensation.

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As would appear from the recitals in Deed No. 11055 dated 7th May, 1849 (P1) and the evidence of Pahamune Sri Sumangala, who is the Mahanayake and the Chief Priest of the Malwatte Chapter, a witness called on behalf of the Plaintiff, it would appear that the Degaldoruwa Vihare was built by the Kandyan King Sri Rajadi Rajasinha, who by copper Sannas inscribed that the incumbency of the Degaldoruwa Vihare should be held in perpetuity by Morathota Rajaguru Dharmaskanda Mahanayake Priest who was succeeded in the incumbency by his pupils Dunuwila Seelawanse Samidorooa, Paranatala Anunayake Unnanse and later by Paranatala Ratnapala and later by his successor Paranatala Ratnapala Unnanse. By this deed the last mentioned incumbent Paranatala Ratnapala Unnanse gave over the Degaldoruwa Vihare-isthane and the lands, houses, gardens, etc., appertaining thereto to four of his pupils and their pupillary successors, one of which pupils was Parusala. This deed also contained directions that the four donees named therein should improve the Pansala, which belonged to the Malwatte Vihare, Morathota Nayake Unnanse, employing for such improvements the services of the tenants of the Degaldoruwa Vihare. I am mentioning the recital in this deed for the purpose of indicating the basis on which Parusala came to occupy the Meda Pansala and effect improvements thereto. At this stage, it may be useful to state that Parusala claimed the incumbency of the Degaldoruwa Vihare against Paranatala Ratnapala Unnanse in D. C. Kandy, 81630 of 27th March, 1878, and his claim and action was dismissed. Parusala, however, persevered in his claim and filed action No. 90099 in 1882 against certain persons and the 3rd Defendant in that action named Amunugama Ratanapala Unnanse was declared entitled to the incumbency of the Degaldoruwa Vihare and it was ordered that he be placed in quiet possession of the Vihare and its endowments. Not-

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withstanding Parusala's failure to obtain a declaration in his favour as Incumbent of Degaldoruwa Vihare he appears to have continued to occupy the Meda Pansala.

A Pansala, according to the evidence in the case, is a building used for the residence of a priest. In the premises of the Malwatte Vihare there are several Pansalas. The Incumbent priests of these several Vihares have the right to occupy the Pansalas which are appurtenant to those Vihares and they do so whenever they come into Kandy and reside in the premises of the Malwatte Vihare. It does also appear from the evidence when the Incumbent priests of these Vihares do not occupy the Pansalas appurtenant 10 to those Vihares other priests who have occasion to reside in the premises of the Malwatte Vihare occupy the vacant Pansalas. The mere fact as pointed out by the Supreme Court that Parusala continued to occupy the Meda Pansala even after the decisions of the Courts adverse to his claim and right to the incumbency of the Degaldoruwa Vihare, cannot give rights to any adverse claim in favour of Parusala whose possession at all events, after the decisions against him, must be regarded as the possession of a licensee by the sufferance of the rightful owners.

To come now to the main question as to what is comprised within the corpus of the Meda Pansala, be it noted that a plan of the premises of the 20 Malwatte Vihares and the buildings standing thereon was made in the year 1863. A certified copy of this plan certified by the Surveyor-General has been produced marked X.

Mr. Spencer, surveyor, has given evidence with reference to this plan. He has also prepared a plan of these premises being plan marked (20A) filed of record. He has shown in his plan the various buildings claimed by the Plaintiffs and the lands claimed by them as sketched by him in the inset and edged green. According to Mr. Spencer's evidence, Lots 3, 4, 5 and 6 fall within the portion shown as buildings in the plan of 1863. He has also stated that the buildings edged blue in the inset correspond to the buildings 30 numbered 1, 2, 3, 4, 5 and 6 in the plan made by him.

He also states that the buildings now on the land occupy the identical site occupied by the buildings as shown in the plan of 1863, although there is a slight difference in the contour of the buildings.

After Mr. Spencer gave evidence on the first occasion he was directed by the Court to show in the plan the extent of Lots 1, 2, 3, 4, 5 and 6 and the portion of land tinted green in the inset and also to show the extent of Lot 2 separately. He has shown it in his computation marked 20B. According to his computation the area of Lot 2 is only .05 of a perch. The portion that is edged green, as shown in the inset, is found to contain an extent of 1 acre 40 3 roods and 30 perches. This is nearly 2 acres, which is the extent of 1 amunam of paddy sowing extent which is the extent referred to in the deeds produced.

On the question whether the Meda Pansala consists of only the Lot 2, (a rather insignificant extent of .05 perches) or whether the corpus is a larger one, reference may be had to the description of the Meda Pansala in the Deed P₂ dated 7th May, 1849. The description is as follows:—

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“All the rooms of the Morathota Nayake Priest in the Malwatte Vihare, Kandy, and all the timber that Pansala and the garden belonging thereto of 1 amunam paddy sowing extent including all the plantations; the copy of agreement No. 72, dated 27th May, 1848, by which a sum of £4 per annum was agreed to be paid for the ground covered by the opening on this garden, a road leading to Mr. Kershow's house.” There is a similar description of the Meda Pansala in Deed No. 5962 of 11th September, 1844, (P₃) which description is as follows:—“Every room and the timber and all other substance therein which are in the Pansala of the Morathota Mahanayake priest in the Malwatte Vihare, Kandy, and the garden with fruit-bearing trees belonging to that Pansala of one amunam paddy sowing extent.”

It will thus be seen that there is a great deal of discrepancy between the extent of the corpus contained in Lot 2 and the description of the Meda Pansala as stated in these two deeds. That the Defendants themselves had in their contemplation a larger extent of buildings than are comprised in Lot 2 only is apparent from the amount of compensation for improvements claimed by them in the answers filed. The 1st and 2nd Defendants by their answer claimed compensation in the sum of Rs. 20,000. The 3rd and 4th Defendants claimed compensation in the sum of Rs. 15,000. It is inconceivable, whatever may be the sentimental or fancy value which the Defendants may have sought to put upon these buildings, that the claim in respect of improvements, if any, effected by them on the building which stood on Lot 2 alone could come up to any sum even approximating to the large sums claimed.

The position appears to emerge clearly that the Defendants, when they found that they have lost the title to the Meda Pansala by reason of the judgment of the Supreme Court have sought thereafter to reduce within the lowest possible compass the corpus and the extent of the Meda Pansala.

Evidence has also been placed before me to indicate the location of the Meda Pansala with reference to the other Pansalas which lie contiguous to it. This method of proof is no doubt subject to the infirmity that the probative value depends upon the exact location of the adjoining Pansalas on the ground.

Counsel for the Plaintiffs has endeavoured to locate as far as is possible the site of the Meda Pansala by oral testimony placed before the Court. Apart from other witnesses, whom they have called, the Plaintiffs rely strongly on the evidence of Pahamune Mahanayake Thero, who is the Chief High Priest of the Malwatte Chapter. This aged and revered priest has chosen to support the claim of the Plaintiff as against the claim of the 1st and 2nd Defendants who claim the premises as Sanghika property and of the 3rd and 4th Defendants who claim the property by pupillary succession from Parusala.

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The Defendants have called in support of their case, Deerananda Nayake, who is the Secretary of the Karaka Sabha and Rambukwelle Dharmarakki Sobhitha who is the Anunayake of Malwatte Vihare. According to Deerananda, the Meda Pansala which belonged to Morathota High Priest is said to be Lot 2 only consisting of three rooms, two big rooms and a small one. He has also stated that Parusala built the building shown as Lot 1 in Mr. Spencer's plan which lies between the Poya Malluwe and the Pansala occupied by Parusala. This witness has also given evidence with regard to a Pansala which he called the Pansala of Mahalle, which he pointed out as being identical with Lot 6 in Mr. Spencer's plan. Later, while giving 10 evidence he pointed to Lot 5 as being Mahalle's Pansala and added that Parusala repaired it. He also stated that the buildings on Lot 4 was not in existence when he came to live in these premises and that the building now standing on it was built by Parusala. The evidence given by this witness with regard to the various buildings which are in dispute is not very clear and has left on my mind the impression that he is giving such evidence as would support the contention of the Defendants as best he could. The other witness relied on by the Defendants is Rambukwelle Sobhitha, who is the Anunayake who holds office next in rank to the Mahanayake. He has a Pansala in the Malwatte Vihare premises known as the Rambukwelle Pansala. 20 This witness, too, has given evidence that Morathota Pansala consisted of the three rooms, those three rooms apparently being the three rooms comprised in Lot 2. This witness has given evidence of the fact that the row of building which fall within Lot 1 were built by Parusala and also that the buildings marked Lot 4 were also built by him. From the evidence of this witness it would appear that Parusala was in possession of the properties belonging to the Degaldoruwa Vihare. Even assuming that Parusala had effected certain improvements to the Meda Pansala and put up additional buildings while he was in possession of the property which belonged to the Degaldoruwa Vihare, the question still remains for consideration whether, 30 in these circumstances, Parusala or his pupillary successors could claim compensation against the present incumbent and the Trustee of the Degaldoruwa Vihare. On a consideration of the evidence given by these witnesses, I am of opinion that Pahamune Mahanayake Thero has chosen to support the claim of the incumbent of a Vihare which is situated outside the premises of the Malwatte Vihare in preference to the claim of the priests residing in the Malwatte premises because the claim of the Degaldoruwa Vihare is founded on truth. This priest has been residing in the premises of the Malwatte Vihare from the year 1875. Being now the Mahanayake Thero he is resident at the Poyamaluwa, which lies adjacent to the Meda Pansala. 40 He has stated that this Pansala is called "Meda" because it is between the Poyamaluwa and the Sangaraja Pansala. He has also given evidence of the fact that Parusala put up certain buildings namely a row of Sanghika buildings by the hall where the priests take their meals. As regards the improvements alleged to have been made by the Defendants he is not in a position to say whether any other improvements were effected by them except the whitewashing of the buildings.

As regards the extent of the corpus of Meda Pansala, the witness has stated also that it is a very big Pansala containing several rooms.

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The evidence of this witness helps to locate the Meda Pansala by reference to the Pansala where Benthara Dewamitta lives namely Lot 3 and by reference to the Rambukwelle Pansala which is said to lie to the East of Meda Pansala.

The witness has further identified that the Meda Pansala is identical with what he knew in days gone by as the Morathota Pansala and that the rooms now existing and comprising Meda Pansala were the rooms which were
10 in existence during the time of Morathota except for the addition of the Sanghika buildings which were put up by Parusala and certain renovations to old buildings.

Evidence with regard to the location of the Rambukwelle and the Hippola Pansala which lie to the East adjacent to the Meda Pansala has also been given by Ratnapala the 2nd Plaintiff who also stated that on the South of the Meda Pansala is a land lying below the road leading to Hillwood School, and on the West there is the Poyamaluwa Vihare. This witness has also referred to the fact which is recited in the document P2 of an agree-
20 ment for the sum of £4 per annum for the ground taken in opening on this garden of a road leading to Kershow's house which is identified as the road now leading to the Hillwood School.

Upon a consideration of the evidence placed before the Court by the parties, I have come to the conclusion on the issues submitted for adjudication that the Meda Pansala is comprised of Lots 1, 2, 3, 4 and 5 and not merely of Lot 2 as contended for the Defendants.

In view of the claim now set up on behalf of the Defendants who claim Lots 1, 4 and 5 upon an independent title by their amended statement filed on 29th October, 1940, it becomes necessary to consider whether the Defendant can sustain any title to these lots on the basis of that claim. The present
30 claim proceeds on the footing that Parusala claimed monastic rights of succession on two sacerdotal lines, one from his tutor Mahalle who was himself the pupil of Vehelle Guneratane who was in the pupillary succession of Saranankara Sangaraja and Attaragama Rajaguru and the other through Paranatala Ratnapala of Morathota Paramparawa.

The Defendants now assert that Mahalle had rights of possession in the monastic cells shown as Lots 1, 4, and 5 in the Plan filed in this case and that Ratnapala in the monastic cell shown as Lot 2 known as Meda Pansala. The present contention would appear to be that Parusala's rights in regard to the incumbency and the appurtenant Meda Pansala which were decided
40 adversely to him entailed only the loss of Lot 2 and that his rights through Mahalle in respect of Lots 1, 4 and 5 remained intact. It seems to me that this new claim cannot be set up by the Defendants at this stage. It seems to be clear from the judgment of the Supreme Court that the Defendants have lost whatever rights they may have claimed through Parusala. If the

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Defendants claimed rights which they set up by pupillary succession from Mahalle those rights should have been pleaded in the earlier proceedings and an adjudication thereon obtained.

Judging from the evidence given by Dewamitta, the 3rd Defendant in this case, it seems to me that the present claim to Lots 1, 4 and 5 is a claim set up through Parusala's Paramparawa through his tutor Mahalle. Upon the mere assertion that these buildings belonged to Mahalle, there is no proof that they did so belong. On the other hand, the trend of the evidence indicates that these buildings were put up by Parusala or that certain improvements were made on them by him. Ultimately then the Defendants cannot claim 10 any greater rights than could have been claimed by Parusala. Parusala's claim not having been recognised and having been lost by the decisions of the Court adverse to him, the Defendants are precluded from asserting any claim now. The decisions in the case already entered is binding upon the Defendants not only as regards the rights through Parusala which they set up but also as regards all other rights which they may have set up or put forward in the earlier proceedings. The effect of the judgment of the Supreme Court is to declare that the incumbent of Degaldoruwa Vihare who is in the line of succession of the Morathota Priest is entitled in preference to any of the pupils of Parusala to claim title and the right of possession of 20 the Meda Pansala and to everything which is comprised in it. I have already held that the Meda Pansala which Morathota High Priest was entitled to did comprise Lots 1, 2, 3, 4 and 5.

The claim of Mahalle was never put forward and seems to be a novel claim without any basis for it to rest on. I find that the claim through Mahalle has not been proved and that it is too late for the Defendants to rely on that claim for the purpose of supporting any title to Lots 1, 2, 4 and 5.

The claim of the Defendants on that basis fails. There remains now for consideration only the question as to what improvements if any were effected by the Defendants on Lots 1, 2, 4 and 5 and if so whether they are entitled to 30 claim any compensation in respect of these improvements.

It will be convenient to deal with Issues 9 and 11 before proceeding to deal with the question raised by Issue 10. With regard to Issue 9 there is no doubt some evidence that Parusala did effect certain improvements.

As regards improvements effected by his pupillary successors there is hardly any evidence. In view of the judgment of the Supreme Court, that Parusala's possession after he had lost his claim of title as a result of litigation must be regarded as the possession of a licensee. The question for decision then is whether a person in the position of a licensee can (a) claim 40 compensation for useful improvements effected by him and is (b) entitled to the *jus retentionis*. As regards the first question, it should be noted that the trend of the decisions of the Supreme Court has always been to restrict the right to claim compensation for improvements, only to such persons who had what the Roman-Dutch Jurists called the *possessio civilis*, subject

to certain exceptions based on grounds of equitable considerations in favour of certain persons who had the rights of a planter's share and (2) those who had the *bona fide* expectation of receiving a formal transfer at a future date and effected improvements on that basis. An exception has also been made as a development of the law in the case decided by Bertram, C. J., in 26 New Law Reports 73 by granting the right of compensation for improvements effected by a person in actual possession based on the principle that, if the true owner stood by and allowed certain improvements to be effected and acquiesced in those improvements being so effected, it would be inequitable to deprive the improver of the right to compensation for useful improvements effected by him. In the case of Parusala, can it be said that these improvements, if any, effected by him were made with the consent of the true owner? After the decision of the Courts adverse to him, his possession is clearly, possession precario. He cannot, therefore, be regarded as a *bona fide* possessor, for it must be assumed that, from and after the date of decision of the Courts, he had the knowledge that the property, which he was improving was property in which he had no right of ownership, nor is there any proof that he effected these improvements with the knowledge, consent and acquiescence of the true owner. It has been held by a full Bench in the case reported in 17 New Law Reports 278 that the lessee has no *possessio civilis* and that his enjoyment of the land cannot be deemed to be *bona fide* possession entitling him to any right of compensation. In a later case reported in 26 New Law Reports 97, it has been held that a lessee who made improvements is not entitled to *jus retentionis*. If Parusala, who remained in occupation of these premises effected these improvements on the footing that the buildings standing on the premises of the Malwatte Vihare should be regarded as Sanghika property, as in a sense all such religious endowments ought to be, he would not be entitled to claim compensation in respect of those improvements. Presumably those improvements must be regarded as having been effected for the benefit of the Sangha and cannot be regarded as Pudgalika property. Even if the value of the improvements be regarded as Pudgalika property of Parusala the further question arises whether his pupillary successors can claim compensation on account of these improvements or whether the only persons who can claim compensation would be the intestate heirs of Parusala. This question has been dealt with in the cases reported at 3 New Law Reports 380 and 5 Supreme Court Circular 61. In the latter case, it was held that money saved by a Buddhist priest, who is the incumbent of a Pansala, passed on his death to his temporal representatives. There is a further question whether if the improvements were really effected by Parusala by utilising the income from the temporalities belonging to the Degaldoruwa Vihare as he was entitled to do by virtue of the rights conferred on him by the deed which I have already referred to and by utilising the services of the tenants of the Degaldoruwa Vihare, whether any right of compensation does arise at all. In these circumstances I am of opinion that neither Parusala nor his pupillary successors are entitled to claim any right of compensation in respect of improvements if any, effected by him.

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In the case reported in 13 Ceylon Law Weekly at 136 Keuneman, J., has reviewed all the decisions bearing on the question of compensation and *jus retentionis* and he came to the conclusion that, in circumstances such as these, the possessor would not be entitled to claim the right or *jus retentionis* in respect of any improvements effected by him.

In dealing with the question of compensation for improvements, as pointed out by Garvin, J., in the case reported in 25 New Law Reports at page 267, the question whether an improver must be regarded as a *bona fide* or a *mala fide* possessor must depend upon the special facts of each case. Upon a careful consideration of all the evidence in the case and the facts 10 which have emerged from that evidence, I must hold that in the circumstances of this case, Parusala and his pupillary successors must be regarded as *mala fide* possessors, and not entitled therefore to make any claim for compensation for improvements nor to claim the right of *jus retentionis*. The only issue which now remains is the amount of compensation as formulated in Issue 10. It is hardly necessary to deal with this question, in view of my answer to Issue 11 that the Plaintiffs are not liable to pay the Defendants the cost of such improvements and that the Defendants are not entitled to *jus retentionis*.

With regard to the evidence led as to the cost of these improvements, 20 we have only the evidence of Mr. Morley Spaar who has made an estimate to the best of his ability of the cost of the recent additions and improvements effected apparently by Parusala. In the very nature of things the question of the assessment of the value of the improvements to an old building by reference to observations made as to how much of it should be regarded as old and how much of it as being new is one which is attended with the greatest difficulty. It is not possible, therefore, to make a correct estimate of the cost of these improvements and I do not propose in view of my finding on Issue 11 adverse to the Defendants to make any attempt to assess the value of these improvements. I will, however, say that the claim for improve- 30 ments has been exaggerated beyond all reasonable estimates, which at the most will amount to a very small fraction of the very exaggerated claim which has been put forward by the Defendants.

In the result, I would hold on Issue 13 as framed by me that the Meda Pansala which is claimed to be an appurtenant of the Degaldoruwa is comprised of Lots 1, 2, 4 and 5 subject to the reservation as regards the further claims to the buildings which have been made in the course of the trial.

I hold on Issue 9 that Parusala did effect certain improvements to the Pansala; on Issue 10 that the cost of these improvements have not been ascertained by me, it being unnecessary to do so in view of my finding on Issue 40 11; on Issue 11 I hold that the Plaintiffs are not liable to pay to the Defendants the cost of any improvements and that the Defendants are not entitled to the *jus retentionis*.

Judgment will be entered, in terms of the judgment of the Supreme Court, declaring the 1st Plaintiff entitled to the possession of the Meda Pansala as an appurtenance and endowment of the Degaldoruwa Vihare and decreeing that the Defendants be ejected from the said Meda Pansala and that the Plaintiffs be placed in possession thereof.

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The claim in reconvention of the Defendants for compensation is dismissed.

On the question of damages, I find that no issue has been framed and no evidence led by the Plaintiffs.

10 The Defendants will also pay to the Plaintiffs the costs of this action. Enter decree accordingly.

I would like to add that after having perused the evidence and the documents produced by the parties, I found that no useful purpose could have been served by inspecting these premises and therefore decided not to do so.

(Sgd.) G. C. THAMBYAH,
D. J.
6-2-41.

Pronounced in the presence of Mr. Wickremaratne for Mr. Guruswamy for the Plaintiffs and Mr.....for the Defendants.

20 (Sgd.) NIGEL I. LEE,
D. J.

No. 24.

Decree of the District Court, Kandy.

No. 24.
Decree of the
District Court,
Kandy 6-2-41

DECREE

This action coming on for final disposal before G. C. Thambyah, Esquire, District Judge, Kandy, on the 6th day of February, 1941, in the presence of the Proctor for the Plaintiffs and of the Proctors for the Defendants.

30 It is ordered and decreed that the 1st Plaintiff be and he is hereby declared entitled to the possession of the Meda Pansala as an appurtenance and endowment of the Degaldoruwa Vihare as comprised of Lots 1, 2, 4 and 5 depicted and the land shewn in the inset edged green in Plan dated 16th July, 1938, made by Mr. P. Spencer and filed of record in this case.

It is further ordered that the said Defendants be ejected from the said Meda Pansala and that the Plaintiffs be placed in possession thereof. It is further ordered and decreed that the claim in reconvention of the Defendants for compensation is hereby dismissed.

And it is further ordered and decreed that the Defendants do pay to the Plaintiffs the costs of this action.

(Sgd.) T. F. C. ROBERTS,
District Judge.

40 The 6th day of February, 1941.

No. 25.

No. 25.
3rd and 4th
Defendants'
Petition of
Appeal to the
Supreme Court
7-2-41.

Third and Fourth Defendants' Petition of Appeal to the Supreme Court
IN THE SUPREME COURT OF THE ISLAND OF CEYLON

1. PIYARATANA UNNANSE and
2. AMUNUGAMA RATANAPALA THERO of Degaldoruwa Vihare
in Lower Dumbara*Plaintiffs.*

vs.

S. C. 241 of 1941 (Final)

D. C. Kandy.

Case No. 45415.

10

1. WAHAREKE SONUTTARA UNNANSE.
2. WAHAREKE GUNARATANA UNNANSE.
3. AKWATTE DEWAMITTA UNNANSE.
4. MADUGALLE SEELAWANSE UNNANSE, all of Malwatte,
Kandy*Defendants.*
1. AKWATTE DEWAMITTA UNNANSE.
2. MADUGALLE SEELAWANSA UNNANSE, both of Malwatte,
Kandy*3rd and 4th Defendants-Appellants.*

vs.

1. PIYARATANA UNNANSE and
2. AMUNUGAMA RATANAPALA THERO, both of Degaldoruwa
Vihare in Lower Dumbara.....*Plaintiffs-Respondents.*
1. WAHAREKE SONUTTARA UNNANSE.
2. WAHAREKE GUNARATANA UNNANSE
1st and 2nd Defendants-Respondents.

20

To,

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

On this 7th day of February, 1941.

The Petition of appeal of the abovenamed 3rd and 4th Defendants- 30
Appellants, appearing by their Proctor Victor Mahima Guruswamy states
as follows :—

1. The Plaintiffs-Respondents having been successful in their appeal
to Your Lordship's Court this case was fixed for hearing on Issues 9, 10
and 11 which related to compensation for improvements.

2. At the hearing a further issue was framed which purported to answer the question what was Meda Pansala. The Appellants stated that the Meda Pansala consisted of only Lot 2, that Lot 5 was another Pansala which belonged to Mahalle from the Attaragama Rajaguru Paramparawa now improved and that Lots 1 and 4 were open Sanghika lands built upon by Parusala.

No. 25.
3rd and 4th
Defendants'
Petition of
Appeal to the
Supreme Court
7-2-41-Continued.

3. After trial the learned District Judge held that Lots 1, 4 and 5 formed part of Meda Pansala and that further the Defendants-Appellants were not entitled to compensation and that they be ejected.

4. Being aggrieved by the said judgment and finding the Appellant^s beg to appeal therefrom to Your Lordships' Court on the following among other grounds that may be urged at the hearing of this appeal :—

(a) That the said judgment is contrary to law and weight of evidence in the case.

(b) Your Lordships will observe that the plaint did not describe the Meda Pansala by any boundaries whatsoever. The Respondents after decree are now seeking to include a stretch of open land and sacerdotal halls in the vicinity.

(c) That Mahalle was in the line of the Attaragama Rajaguru Paramparawa and the Defendants are in that line have been proved as a fact and that the learned District Judge's rejection of this as of no avail to the Defendants as they had not claimed Mahalle's right in the original answer is unwarranted as what was in dispute was the right of succession to Meda Pansala of the Degaldoruwa Paramparawa and not Mahalle's Pansala of Attaragama Rajaguru Paramparawa.

(d) The Mahanayake whose evidence has been accepted by the learned District Judge has testified that Parusala did in fact build sacerdotal halls in the Malwatte Sanghika lands.

(e) It is submitted to Your Lordships that the Defendants-Appellants are in any event entitled to compensation as the improvements they had made were not as the co-pupils of the Plaintiffs but as *bona fide* possessors claiming a title independent of the Plaintiffs.

(f) Your Lordships' Appellants submit that the District Judge's Order for the ejection of the Appellants is against the Buddhist Ecclesiastical Law, as no priest can be ejected from Sanghika Property.

Wherefore Your Lordships' Appellants pray that the order and finding of the learned District Judge be set aside and that they may be decreed entitled for compensation for improvements and for a declaration from Your Lordships' Court that Lot 2 alone in the Plan filed of record constitutes the Meda Pansala and the Appellants also prays for costs and for such other further relief as to Your Lordships' Court shall seem meet.

(Sgd.) V. M. GURUSWAMY,
Proctor for Appellants.

No. 26.

No. 26.
1st and 2nd
Defendants'
Petition of
Appeal to the
Supreme Court
1C-2-41.

First and Second Defendants' Petition of Appeal to the Supreme Court

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

1. PIYARATANA UNNANSE.
2. AMUNUGAMA RATANAPALA UNNANSE of Degaldoruwa
Vihare in Lower Dumbara.....*Plaintiffs.*

vs.

S. C. 242 of 1941 (Final)

D. C. Kandy, 45415.

1. WAHAREKE SONUTTARA UNNANSE. 10
2. WAHAREKE GUNARATANA UNNANSE.
3. AKWATTE DEWAMITTA UNNANSE.
4. MADUGALLE SEELAWANSA UNNANSE, all of Malwatte
in Kandy.....*Defendants.*

1. WAHAREKE SONUTTARA UNNANSE.
2. WAHAREKE GUNARATANA UNNANSE, both of Malwatte
in Kandy.....*1st and 2nd Defendants-Appellants.*

vs.

1. PIYARATANA UNNANSE and
2. AMUNUGAMA RATANAPALA UNNANSE, both of Degal- 20
doruwa Vihare in Lower Dumbara.....*Plaintiffs-Respondents.*
3. AKWATTE DEWAMITTA UNNANSE.
4. MADUGALLE SEELAWANSA UNNANSE, both of Malwatte
Vihare in Kandy.....*3rd and 4th Defendants-Respondents.*

Before the Honourable the Chief Justice and the other Judges of the Honourable the Supreme Court of the Island of Ceylon.

On this 10th day of February, 1941.

The Petition of appeal of the 1st and 2nd Defendants-Appellants abovenamed appearing by their Proctor Loku Banda Ratnayake states as follows :—

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1. The Plaintiffs-Respondents being the incumbents of the Degaldoruwa Vihare sued the Defendants abovenamed in the above action for a declaration that they are entitled to Meda Pansala situated at Malwatte on the footing that the said Pansala is appurtenant to the Degaldoruwa Vihare. Defendants claimed the said Pansala through their tutor Parusala Anunayake. The

said case was dismissed and the Plaintiffs-Respondents having succeeded in their appeal to Your Lordships' Court this case was sent back for hearing upon Issues 9, 10 and 11 which are as follows :—

No. 26.
1st and 2nd
Defendants'
Petition of
Appeal to the
Supreme Court
10-2-41—
Continued.

9. Did Parusala and his pupillary successors effect improvements to the said Pansala ?
 10. If so, what are the costs of such improvements ?
 11. If the Plaintiffs are held entitled to the premises are Plaintiffs liable to pay the Defendants the costs of such improvements, and are they entitled to a *jus retentionis* ?
- 10 2. At the trial an issue was raised in an endeavour to ascertain what Meda Pansala was. The Plaintiffs-Respondents claimed Lots 1, 2, 4 and 5 among others whilst the Defendants stated that Lot 2 alone comprising of three rooms was Meda Pansala and that Defendant claimed Lots 1 and 4 on a chain of title independent of Morathota Rajaguru Maha Nayake and Degaldoruwe Vihare (*Vide* Plan filed of record marked "X").
3. The learned District Judge after trial on 6-2-1941 held that Lots 1, 4 and 5 formed part of Meda Pansala, that Defendants were not entitled to any compensation for improvements and that they be ejected from Lots 1, 2, 4 and 5.
- 20 4. Feeling aggrieved by the said finding these Appellants beg to appeal therefrom to Your Lordships' Court on the following among other grounds that may be urged by Counsel for Appellants at the hearing of this appeal.
- (a) The said judgment is contrary to law and the weight of evidence led in this case.
- (b) The learned District Judge in his judgment states :
"Judgment will be entered in terms of the Judgment of the Supreme Court declaring the 1st Plaintiff is entitled to the possession of the Meda Pansala as an appurtenance and endowment of the Degaldoruwe Vihare and decreeing that the Defendants be ejected from the said Meda Pansala and that the Plaintiffs be placed in possession thereof."
- 30

It is respectfully submitted that the order of ejection clearly was not in contemplation in the judgment of Your Lordships' Court referred to and the learned District Judge's order is outside the scope of the matters submitted to him for adjudication.

- (c) It is respectfully submitted that the action was for a declaration of a right to Meda Pansala and the learned District Judge in his judgment accepts that "that a Pansala according to the evidence of the case is a building used for the residence of a priest" and it is significant that the Plaintiffs-Respondents in their plaint omitted to describe what the Meda Pansala was. Having been declared entitled to a Pansala, a building, the Plaintiffs-Respondents are now seeking to enlarge upon what they are really entitled to and now claim two amunams of land which would be about a fourth share of the entirety of Malwatte Vihare including no less than six other Pansalas claimed by priests independently of the Plaintiffs line of succession.
- 40

No. 26,
1st and 2nd
Defendants'
Petition of
Appeal to the
Supreme Court
10-2-41—
Continued.

(d) It is respectfully submitted that the learned District Judge in directing the Defendants to file a statement of claim setting out the chain of title upon which they claim independently of Morathota Maha Nayake and enquiring into the same has stepped beyond the matters that arise upon Issues 9, 10 and 11.

(e) The evidence in the case clearly establishes that Mahalle, the tutor of Parusala, from whom Defendants claim was in the line of Attaragama Rajaguru Paramparawa and that it is not correct for the learned District Judge to hold that that was of no avail to these Defendants on the ground that such a claim was not set out in their original answer, in view of the fact that Plaintiffs came to Court claiming Meda Pansala through the Morathota 10 Paramparawa and that in the contemplation of the parties there was no contest as regards any right that Mahalle and Parusala acquired from the Attaragama Rajaguru Paramparawa to Lots 1, 4 and 5.

(f) The learned Judge's finding "it seems to be clear from the judgment of the Supreme Court that the Defendants have lost whatever right they claim through Parusala if the Defendants claim rights which they set up by pupillary succession from Mahalle, those rights should have been pleaded in the earlier proceedings and an adjudication thereon obtained." This is incorrect in view of the nature of the claim set out in paragraph (f) hereof.

(g) The evidence of Deerananda Nayake Thero, Secretary of the Chapter, 20 and Rambukwelle Sobitha Anunayake Thero is entitled to some weight and their evidence would also show the *bona fide* nature of the possession by Parusala Anunayake Thero.

(h) In the absence of any valid reason the order of ejectment is repugnant to the Buddhist ecclesiastical law.

(i) The Plan of 1863 referred to by the learned Judge in no way shows what the Meda Pansala is.

(j) The Maha Nayake of Malwatte admits that Parusala Anunayake put up certain buildings. He further states that any building put up by him on Sanghika property of the Malwatte Vihare would devolve on his pupils 30 and therefore there is no reason why the buildings put up by Parusala Anunayake Thero quite independent of any chains of title should not devolve on his pupils, the Defendants.

(k) The Deeds P1 and P2 are inconsistent with the original donation by the king and any Pansala put up on Sanghika property does not take with it any land except the ground covered by it.

WHEREFORE these Appellants pray that Your Lordships be pleased to set aside the finding of the learned District Judge and that the Appellants be declared entitled to Lots 1, 4 and 5 and for a declaration that Lot 2 comprising of three rooms alone constitutes Meda Pansala and for costs and for 40 such other and further relief as to Your Lordships' Court shall seem meet.

(Sgd.) L. B. RATNAYAKE,
Proctor for 1st and 2nd Defendants-Appellants.

No. 28.
Petition to
Amend the
Decree
11-1-43

No. 28.

Petition to Amend the Decree.

IN THE DISTRICT COURT OF KANDY

- 1. AMUNUGAMA PIYARATANA UNNANSE and
- 2. AMUNUGAMA RATANAPALA THERO both of Degaldoruwa
Vihare in Lower Dumbara.....*Plaintiffs.*

vs.

No. 45415.

- 1. WAHAREKA SONUTTARA UNNANSE
- 2. WAHAREKA GUNARATANA UNNANSE 10
- 3. AKWATTE DEWAMITTA UNNANSE
- 4. MADUGALLE SEELAWANSA UNNANSE all of Malwatte
in Kandy.....*Defendants.*

-
- 1. AMUNUGAMA PIYARATANA UNNANSE and
 - 2. AMUNUGAMA RATANAPALA THERO both of Degal-
doruwa Vihare aforesaid.....*Plaintiffs-Petitioners*

and

- 1. WAHAREKA SONUTTARA UNNANSE
- 2. WAHAREKA GUNARATANA UNNANSE
- 3. AKWATTE DEWAMITTA UNNANSE, and 20
- 4. MADUGALLE SEELAWANSA UNNANSE all of Malwatte
aforesaid.....*Defendants-Respondents.*

On this 11th day of January, 1943.

The petition of the petitioners abovenamed appearing by their Proctor Michael Arnoldus Vanderwall states as follows :—

1. The above styled action was instituted by the Plaintiffs-Petitioners for a declaration that the Meda Pansala situate in the Malwatte Vihare was part and parcel of the endowments of the Degaldoruwa Vihare and as such was vested in them, and that the 1st Plaintiff-Petitioner abovenamed be declared entitled to the possession thereof and that the Defendants-Respondents 30 be ejected from the said Meda Pansala.

2. The Plaintiffs-Petitioners maintained that the buildings marked 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 and the land shewn in the inset edged green in Plan made by Mr. P. Spencer and filed of record represented the said Meda Pansala which constituted the subject-matter of the above styled action.

No. 28.
Petition to
Amend the
Decree 11-1-43
—Continued.

3. As the buildings marked 3, 6, 7, 8, 9 and 10 were claimed by persons who were not parties to the action it was agreed that the investigation of title to those lots need not be held in the said proceedings and that in any declaration which the Court might ultimately make on the question as to what was comprised within the Meda Pansala regard need not be had to the investigation of the title to Lots 3, 6, 7, 8, 9 and 10 without prejudice, however, to the Plaintiffs-Petitioners' rights to their title to those lots in separate proceedings and Issue 13 which was framed as follows:—

“Do the buildings marked 1, 2, 3, 4, 5 and 6 and the land shewn in the inset edged green in Mr. Spencer's Plan represented the Meda Pansala which is the subject-matter of this action” was accordingly modified so as to include in it Lots 1, 2, 4 and 5 being the only buildings to which the Defendants made a claim.

4. On the 6th February, 1941, judgment was delivered that the Meda Pansala is comprised of Lots 1, 2, 4 and 5 subject to the reservation as regard the further claims to the buildings which had been made in the course of the trial and declaring that the 1st Plaintiff-Petitioner abovenamed was entitled to the possession of the Meda Pansala as an appurtenance and endowment of the Degaldoruwa Vihare and decreeing that the Defendants-Respondents be ejected from the said Meda Pansala and the Plaintiffs-Petitioners be placed in possession thereof.

5. Decree has been entered, *inter alia*, as follows:—

“It is ordered and decreed that the 1st Plaintiff be and he is hereby declared entitled to the possession of the said Meda Pansala as an appurtenance and endowment of the Degaldoruwa Vihare as comprised of Lots 1, 2, 4 and 5 in Plan marked 20 (a) and dated the 16th July, 1938, made by Mr. P. Spencer and filed of record in this case.”

6. It is urged, with respectful submission, that inasmuch as it has been adjudged that the buildings marked as Lots 1, 2, 4 and 5 are comprised in the Meda Pansala as represented by the inset edged green in Mr. Spencer's said Plan and it has been decreed that the “Meda Pansala” as comprised of Lots 1, 2, 4 and 5—there is a variance between the said judgment and decree.

7. It is most respectfully submitted that in order that decree might confirm to the judgment the decree should read as follows, namely:—

It is ordered and decreed that the 1st Plaintiff be and he is hereby declared entitled to the possession of the Meda Pansala as an appurtenance of the Degaldoruwa Vihare the said Meda Pansala, in which are comprised Lots 1, 2, 4 and 5 being represented by the inset edged green in Plan dated 16th July, 1938, and made by Mr. P. Spencer and filed of record.

No. 28.
Petition to
Amend the
Decree 11-1-43—
Continued.

WHEREFORE the Plaintiffs-Petitioners annex their affidavit hereto and humbly prays that the Court may be pleased to direct that in order that the decree may be brought into conformity with the judgment the decree may be amended by the deletion of the words beginning "as comprised of"; and ending "in this case" and by the substitution therefor of the following words namely:—

The said Meda Pansala in which are comprised Lots 1, 2, 4 and 5 being represented by the inset edged green in Mr. Spencer's Plan marked 20 (a) dated the 16th July, 1938 made by Mr. P. Spencer and filed of record.

And for all such further and other relief as to this Court shall seem meet. 10

(Sgd.) MICHAEL A. VANDERWALL,
Proctor for Plaintiffs-Petitioners.

No. 29.

Proceedings and Order Relating to Amendment of Decree

No. 29.
Proceedings
and Order
relating to
Amendment
of Decree
22-3-43.

March 12, 1943.
No. 45415.

ADVOCATE Mr. MOLAMURE, instructed by Mr. GURUSWAMY, for 3rd and 4th Defendants.

ADVOCATE Mr. JONKLAAS, instructed by Mr. VADNERWALL, for the Plaintiff. 20

ADVOCATE Mr. JAYASINGHE for the 1st and 2nd Defendants, instructed by Mr. RATNAYAKE.

Mr. Jonklaas refers to Issue 13, and Amendment of the Issue. Passages in judgment, &c., &c. Mr. Spencer's Evidence. Finding of the Court.

Mr. Jonklaas replies.

Mr. Molamure cites 5 Times Reports page 152 case of Weerappa Chetty *vs.* Cooray.

I reserve my order in the case.

(Sgd.) C. NAGALINGAM,
D. J. 30

Order.

This is an application by the Plaintiffs-Petitioners for the amendment of the decree so as to bring it, according to them, in conformity with the judgment of this Court dated 6th February, 1941.

The Defendants-Respondents take two objections. The first is that the judgment of this Court having been confirmed by the Supreme Court this Court has no jurisdiction to accede to the application of the Plaintiffs. The second is that the application of the Plaintiffs is in reality an application to amend the judgment itself rather than one to bring the decree in conformity with the judgment.

No. 29.
Proceedings
and Order
relating to
Amendment
of Decree
22-3-43—*Con-
tinued.*

To take up the first point, I think it is settled law that once a judgment of an original Court is either affirmed or set aside by the Appellate Court and a decree entered by the latter Court the decree in the case thereupon becomes the decree of the Appellate Court and the original Court would have no jurisdiction to amend even though a transparent and obvious error be found therein. The law in the sense has been laid down in the case of Weerappah Chetty and another *v.* Cooray 5 Times Law Reports 152 where Schneider, J., delivering the judgment of the Court, said: "When this Court affirmed the decree of the lower Court, as a result of an appeal, the decree became a decree of this Court, and it is before the Lower Court only for the purpose of execution."

That this is the position is clear from the language of Section 776 of the Civil Procedure Code. The District Judge has no jurisdiction to make any amendment of that decree. Any amendment is solely within the power of this Court."

Mr. Jonklaas appearing for the Plaintiffs conceded the soundness of this proposition, but he contended that the Supreme Court neither affirmed nor set aside the judgment pronounced by this Court but that it merely rejected the appeal preferred by the Defendants-Appellants on a preliminary objection—*vide* the judgment of the Supreme Court dated 1st October, 1942.

There is a substantial distinction to be drawn between a case where the Appellate Court after hearing the appeal either dismisses or sets aside the judgment of the Lower Court and a case where it rejects and refuses to hear or take any notice of an appeal preferred to it because of some irregularity in the procedure. In the latter case there can be no controversy as there is only one decree for the Supreme Court never brought its judicial mind to bear on the propriety or correctness of the judgment of the lower Court. As the order of the Supreme Court itself indicates, the appeal was rejected without any consideration being given to the terms of the judgment of the Lower Court. I would therefore hold that the judgment of this Court dated 6th February, 1941, though appealed from, was neither affirmed nor set aside by the Supreme Court, and that the only judgment that is final and binding upon the parties is the aforesaid judgment of this Court. I therefore hold that the first objection taken by the Respondents is without merit.

The next objection is one fraught with greater difficulty. The dispute, so far as is relevant to the present question, was formulated as Issue 13 on 2nd June, 1939, and ran as follows:—

Do the buildings marked 1, 2, 3, 4, 5 and 6 and the land shown in the inset edged green in Mr. Spencer's Plan represent the Meda Pansala which is the subject-matter of this action?

At the date of the hearing, *viz.*, 28th August, 1940, the Court modified the issue "by substituting in place of the lots referred to in that issue the following lots: only 1, 2, 4 and 5." So that the issue read as follows:—

Do the buildings marked 1, 2, 4 and 5 and the land shown in the inset edged green in Mr. Spencer's Plan represent the Meda Pansala which is the subject-matter of this action?

The Plaintiffs' case was that not only did the buildings 1, 2, 4 and 5 but also the buildings 3 and 6 as well as the buildings marked 7, 8, 9 and 10 and the land shown in the inset in Mr. Spencer's Plan formed the buildings and the premises of the Meda Pansala. As the buildings marked 3, 6, 7, 8, 9 and 10 were not claimed by the Defendants but were claimed by certain other parties who were no parties to the action, it was deemed unnecessary to go into the question of the title to these buildings and these buildings were therefore excluded from the scope of the trial. But in regard to the buildings 1, 2, 4 and 5 and the land depicted in the inset in Mr. Spencer's Plan of the area of acre 1 roods 3 perches 30 the investigation of the Plaintiffs' title thereto proceeded; the Defendants' case being that the Plaintiffs were entitled only to the building marked Lot 2 in the Plan and to no more, neither to the other buildings 1, 4 and 5 or to the land all these latter being claimed by the Defendants themselves adversely to the Plaintiffs. In the course of the judgment of this Court, the learned Judge who delivered it expressly discussed the merits of the rival claims. He expressed himself as follows:—

"After Mr. Spencer gave evidence on the first occasion he was directed by the Court to show in his Plan the extent of Lots 1, 2, 3, 4, 5 and 6 and the portion of land tinted green in the inset and also to show the extent of Lot 2 separately. He has shown it in his computation marked 20B. According to his computation the area of Lot 2 is only .05 of a perch. The portion that is edged green as shown in the inset, is found to contain an extent of 1 acre 3 roods and 30 perches. This is nearly 2 acres, which is the extent of 1 amunam of paddy sowing extent which is the extent referred to in the deeds produced."

The learned Judge proceeded further and said that—

"On the question whether the Meda Pansala consists of only the Lot 2 (a rather insignificant extent of .05 perches) or whether the corpus is a larger one, reference may be had to the description of the Meda Pansala in the deed P2 dated 7th May, 1849."

The learned Judge then set out the description contained in the deed which showed that the extent of the Meda Pansala and the garden belonging thereto was of the extent of 1 amunam paddy sowing extent. He further said:

“The position appears to emerge clearly that the Defendants, when they found that they have lost the title to the Meda Pansala by reason of the judgment of the Supreme Court have sought thereafter to reduce within the lowest possible compass the corpus and the extent of the Meda Pansala.”

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Proceedings
and Order
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22-3-43—Con-
tinued.

These passages in the judgment demonstrably establish that the Court held against the contention of the Defendants that the Meda Pansala and premises comprised only of the building marked 2 and that the Court held further that the Meda Pansala and premises were of the extent of 1 amunam, and were represented by the buildings and the premises shown in the inset in Mr. Spencer's Plan of the extent of acre 1 roods 3 perches 30. The Defendants, however, lay emphasis on one of the concluding paragraphs of the judgment which runs as follows :—

“In the result, I would hold on Issue 13 as framed by me that the Meda Pansala which is claimed to be an appurtenant of the Degaldoruwa is comprised of Lots 1, 2, 4 and 5 subject to the reservation as regards the further claims to the buildings which have been made in the course of the trial ;”

and contends that in view of the expressed statement that *on Issue 13 as framed* Meda Pansala is comprised of Lots 1, 2, 4 and 5 the Court did not hold that the area set out in the inset formed the premises of the Meda Pansala, but that the finding was that the Meda Pansala comprised of Lots 1, 2, 4 and 5 only. On behalf of the Plaintiffs this paragraph has been said to refer to the finding in regard to the buildings and not in regard to the soil, which question had been disposed of in the earlier part of the judgment by the paragraphs already referred to by me. The Plaintiffs further assert that their contention is entitled to prevail over that of the Defendants in view of the fact that the learned Judge in this paragraph in question refers to the claim to the other buildings.

I think, reading the judgment as a whole and bearing in mind that not only were the buildings 1, 2, 4 and 5 but also the land depicted in the inset in Mr. Spencer's Plan were the subject-matter of the trial between the parties. The learned Judge having disposed of the question of title in regard to the soil in the earlier paragraphs of his judgment dealt with the question of the title to the buildings in the later paragraphs, and the paragraph relied upon by the Defendants must be limited to the conclusion reached by the learned Judge in regard to the buildings and no more. It cannot be said that the learned Judge did not bring his mind to bear on the question of the soil claimed by the Plaintiffs for he has discussed it fully. Nor can it be said that the learned Judge rejected the claim put forward by the Plaintiffs to the soil for there is not a single sentence in the whole of the judgment which can support that contention. If, therefore, the learned Judge did consider the question and did not reject the Plaintiffs' claim and the passages in the judgment show that he upheld the claim of the Plaintiffs, I do not think the contention of the Defendants that the Plaintiffs are making a clumsy attempt to reform

No. 29.
Proceedings
and Order
relating to
Amendment
of Decree
22-3-43—*Con-
tinued.*

the judgment and not the decree is entitled to prevail. I would therefore hold that the decree is at variance with the judgment which declares the Plaintiffs entitled to the area of acre 1 roods 3 perches 30.

I would direct that the decree dated 6th February, 1941, be amended as follows :—

By the interpolation of the following words after the figure ‘ 5 ’ and the word ‘ depicted ’ therein—

“ and the land shown in the inset edged green ”

The Defendants-Respondents will pay to the Plaintiffs-Petitioners the costs of this inquiry.

(Sgd.) C. NAGALINGAM,
D. J.

22nd March, 1943.

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No. 30.

D. C. Kandy 45415.
S. C. No. 289 of 1943.

No. 30.
1st and 2nd
Defendants’
Petition of
Appeal to the
Supreme Court
2-4-43.

1st and 2nd Defendants’ Petition of Appeal to the Supreme Court.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

BEFORE HIS LORDSHIP THE CHIEF JUSTICE AND THE OTHER
JUSTICES OF THE HONOURABLE THE SUPREME
COURT OF THE ISLAND OF CEYLON.

20

1. PIYARATANA UNNANSE
2. AMUNUGAMA RATANAPALA UNNANSE of Degaldoruwa
Vihare in Lower Dumbara.....*Plaintiffs*

vs.

1. WAHAREKA SONUTTARA UNNANSE
2. WAHAREKA GUNARATANA UNNANSE
3. AKWATTE DEWAMITTA UNNANSE
4. MADUGALLE SEELAWANSA UNNANSE, all of Malwatte
in Kandy.....*Defendants* 30

1. WAHAREKA SONUTTARA UNNANSE
2. WAHAREKA GUNARATANA UNNANSE, both of Malwatte
in Kandy.....*1st and 2nd Defendants-Appellants*

vs.

1. PIYARATANA UNNANSE

2. AMUNUGAMA RATANAPALA UNNANSE, both of Degal-
doruwa Vihare in Lower Dumbara.....*Plaintiffs-Respondents*

No. 30.
1st and 2nd
Defendants'
Petition of
Appeal to the
Supreme
Court 2-4-43—
Continued.

and

3. AKWATTE DEWAMITTA UNNANSE

4. MADUGALLE SEELAWANSA UNNANSE, both of Malwatta
Vihare in Kandy.....*3rd and 4th Defendants-Respondents*

On this 2nd day of April, 1943.

The petition of appeal of the 1st and 2nd Defendants-Appellants
abovenamed appearing by their Proctor Loku Banda Ratnayake states as
10 follows :—

1. The Plaintiffs-Respondents by their petition dated 11-1-43 applied
to the District Court of Kandy in this case for an amendment of the decree
already entered by it to bring the said decree according to them in conformity
with the judgment of the said Court dated the 6th February, 1941.

2. The Appellants objected to any amendments on two grounds (*a*)
that the decree needed no amendment, and (*b*) that it was already in conformity
with the judgment and also on the ground that the decree of the District
Court having been affirmed by the Honourable the Supreme Court the
District Court had no jurisdiction to determine the matter now.

20 3. The learned District Judge after hearing Counsel has made order
allowing the application of the 1st and 2nd Respondents to this appeal.

4. Being dissatisfied with the said judgment and order the Appellants
beg to appeal therefrom to Your Lordships' Court on the following and other
grounds which may be urged by Counsel at the hearing of this appeal.

(*a*) The said order is contrary to law and the facts of the case.

(*b*) It will be noted that the dispute between the parties was as to what
constituted the Meda Pansala and the Issue that was tried in the case was
"do the buildings marked 1, 2, 4 and 5 and the land shown in the inset edged
green in Mr. Spencer's Plan represent the Meda Pansala which is the subject-
30 matter of this action?" The learned District Judge after going fully into
the case by his judgment held that the Meda Pansala which was the subject-
matter of the action was comprised of Lots 1, 2, 4 and 5 and stated as follows :
"in the result I would hold on Issue 13 as framed by me that the Meda Pansala
which is claimed to be an appurtenant of Degaldoruwa Vihare is comprised
of Lots 1, 2, 4 and 5 subject to the reservation as regards the further claims
to the buildings which have been made in the course of the trials."

(*c*) Thereafter decree was entered as follows :—This action coming
on for final disposal before G. C. Thambiah, Esquire, District Judge, on
the 6th day of February, 1941, in the presence of the Proctor for Plaintiffs
40 and of the Proctors for the Defendants.

No. 30.
1st and 2nd
Defendants'
Petition of
Appeal to the
Supreme Court
2-4-43—
Continued.

It is ordered and decreed that the 1st Plaintiff be and he is hereby declared entitled to the possession of the Meda Pansala as an appurtenance and endowment of the Degaldoruwa Vihare as comprised of Lots 1, 2, 4 and 5 depicted in Plan marked (20a) dated 16th July, 1938, made by Mr. P. Spencer and filed of record in this case.

It is further ordered and decreed that the said Defendants be ejected from the said Meda Pansala and that the Plaintiffs be placed in possession thereof.

It is further ordered and decreed that the claim in reconvention of the Defendants for compensation is hereby dismissed. 10

And it is further ordered and decreed that the Defendants do pay to the Plaintiffs the costs of this action.

(Sgd.) T. F. C. ROBERTS,
District Judge.

The 6th day of February, 1941.

(d) It will be seen that the decree so far as it goes is in entire conformity with the finding of the learned District Judge as already stated in paragraph (b) above.

(e) If the Plaintiffs-Respondents were dissatisfied with that decree their duty was to have appealed from it but they having not done so now 20 attempt to vary the decree by the addition of the words "shown in the inset edged green."

(f) It is submitted that these words having formed a part of the Issue 13 which the learned District Judge tried and yet in his finding he did not declare that the Meda Pansala is comprised of the buildings 1, 2, 4 and 5 and "the inset edged green" but advisedly left out these words from his finding.

(g) It is submitted that the learned District Judge is now wrong in the interpretation he has given to his predecessor's finding of the appeal being rejected that Your Lordships' Court intended that the judgment of the District Court should stand and stand affirmed. If this be so then the learned 30 District Judge clearly had no jurisdiction to make the order he has made in allowing the application of the 1st and 2nd Respondents.

Wherefore These Appellants pray :—

That Your Lordships' Court be pleased to set aside the order of the learned District Judge dated 22-3-43 in allowing the application of the 1st and 2nd Plaintiffs-Respondents, for costs in this behalf incurred and for such other and further relief as to Your Lordships' Court shall seem meet.

(Sgd.) L. B. RATNAYAKE,
Proctor
for 1st and 2nd Defendants-Appellants. 40

Judgment of the Supreme Court.

S. C. No. 289.

D. C. Kandy (F) No. 45415.

Present: HOWARD, C. J. and de KRETZER, J.*Argued and Decided on*: 17th May, 1944.

H. V. PERERA, K.C. with L. A. RAJAPAKSE for the 1st and 2nd Defendants-Appellants.

No appearance for the Respondent :

HOWARD, C.J.

10 On the 22nd of March, 1943, the District Judge by order amended a decree of one of his predecessors dated the 6th of February, 1941, as follows :—“ By the interpolation of the following words after the figure ‘ 5 ’ and the words ‘ depicted therein ’—‘ and the land shown in the inset edged green.’” The District Judge made this modification in the decree on the ground that the decree was at variance with the judgment. The effect of the order was to award to the Plaintiffs an additional land to that which had been awarded by the decree. On scrutinising the judgment of the 6th of February, 1941, it is clear that the learned District Judge answered Issue No. 13

20 subject to the reservation as regards the further claims to the buildings which had been made in the course of the trial. He gave nothing more. It is obvious that he held that the Plaintiffs were not entitled to the land shown in what is described as the inset edged green. In these circumstances there is no variance between the decree and the judgment.

The order of the 22nd March, 1943, is set aside and the decree must be restored to its previous form. The Defendants will have their costs of the appeal and of the proceedings in the District Court which led to the decree being amended.

(Sgd.) J. C. HOWARD,
Chief Justice.

30

de KRETZER, J.

I agree.

(Sgd.) O. L. de KRETZER,
Puisne Justice.

Decree of the Supreme Court.

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

∴ ∴ ∴

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

1. PIYARATANA UNNANSE and
2. AMUNUGAMA RATANAPALA UNNANSE of Degaldoruwa
Vihare in Lower Dumbara.....*Plaintiffs-Respondents.* 10

against

1. WAHAREKA SONUTTARA UNNANSE
2. WAHAREKA GUNARATANA UNNANSE
3. AKWATTE DEWAMITTA UNNANSE
4. MADUGALLE SEELAWANSA UNNANSE, all of Malwatta,
in Kandy.....*Defendants-Appellants.*

District Court of Kandy.

Action No. 45415.

This cause coming on for hearing and determination on the 17th day of May, 1944, and on this day upon an appeal preferred by the Defendants 20 before the Honourable Sir John Curtois Howard, Kt., K.C., Chief Justice, and the Honourable Mr. L. O. de Kretser, Puisne Justice of this Court, in the presence of Counsel for the Appellants and there being no appearance for the Respondents :

It is considered and adjudged that the decree made in this action by the District Court of Kandy and dated the 22nd day of March, 1943, be and the same is hereby set aside and that decree be restored to its previous form.

And it is further ordered and decreed that the Plaintiffs-Respondents do pay to the Defendants-Appellants their taxed costs of this appeal and of the proceedings in the District Court which led to the decree being 30 amended.

Witness the Honourable Sir John Curtois Howard, Kt., K.C., Chief Justice at Colombo, this 17th day of May in the year of our Lord One Thousand Nine Hundred and Forty-four and of our Reign the Eighth.

(Sgd.) CLARENCE de SILVA,
Dy.-Registrar, S.C.

Petition for Conditional Leave to Appeal to Privy Council
IN THE SUPREME COURT OF THE ISLAND OF CEYLON.
BEFORE HIS LORDSHIP THE CHIEF JUSTICE AND THE OTHER
JUSTICES OF THE HONOURABLE THE SUPREME
COURT OF THE ISLAND OF CEYLON.

D. C. Kandy No. 45415.

- 10 1. PIYARATANA UNNANSE and
2. AMUNUGAMA RATANAPALA UNNANSE of Degaldoruwa
Vihare in Lower Dumbara.....*Plaintiffs.*

vs.

1. WAHAREKA SONUTTARA UNNANSE
2. WAHAREKA GUNARATANA UNNANSE
3. AKWATTE DEWAMITTA UNNANSE
4. MADUGALLE SEELAWANSA UNNANSE, all of Malwatta
in Kandy.....*Defendants.*

1. WAHAREKA SONUTTARA UNNANSE
2. WAHAREKA GUNARATANA UNNANSE, both of Malwatta
in Kandy.....*1st and 2nd Defendants-Appellants to the Supreme Court.*

20

vs.

1. PIYARATANA UNNANSE
2. AMUNUGAMA RATANAPALA UNNANSE, both of Degal-
dorua Vihare, in Lower Dumbara.....*Plaintiffs-Respondents.*

and

3. AKWATTE DEWAMITTA UNNANSE
4. MADUGALLE SEELAWANSA UNNANSE, both of Malwatta
Vihare in Kandy.....*3rd and 4th Defendants-Respondents.*

- 30 1. PIYARATANA UNNANSE and
2. AMUNUGAMA RATANAPALA THERO of Degaldoruwa
Vihare in Lower Dumbara.

Petitioners-Applicants for Leave to Appeal to Privy Council (Plaintiffs)

vs.

1. WAHAREKA SONUTTARA UNNANSE (deceased)
2. WAHAREKA GUNARATANA UNNANSE
3. AKWATTE DEWAMITTA UNNANSE
4. MADUGALLE SEELAWANSA UNNANSE, all of Malwatta
Vihare in Kandy.

5. WAHAREKA SOBITHA UNNANSE } *5th and 6 substituted in*
6. WAHAREKA RATANAPALA UNNANSE } *place of the 1st Res-*
pondent (deceased).

40

Respondents to the Application for Leave to Appeal to Privy Council.

No. 33.
Petition for
Conditional leave
to appeal to
Privy Council
7-6-44—Continued

The humble petition of Piyaratana Unnanse and Amunugama Ratanapala Thero, the Plaintiffs-Respondents and Petitioners-Applicants for leave to appeal abovenamed, appearing by Michael Arnoldus Vanderwall and his assistant Meyappen Ramaswamy Somasunderam, their Proctors, sheweth as follows :—

1. That feeling aggrieved by the judgment and decree of this Honourable Court pronounced on the 17th day of May, 1944, the Petitioners-Applicants who are the Plaintiffs-Respondents abovenamed are desirous of appealing therefrom.
2. That the said judgment is a final judgment and the matter in dispute 10
in the appeal amounts to or is of the value of Rupees Five Thousand or upwards.
3. The Petitioners-Applicants have given notice of the application to the abovenamed Respondents to this application within fourteen days of the said judgment by serving a copy of the said notice on each of the said Respondents and also by serving a copy on Mr. L. B. Ratnayake, Proctor for the said 1st and 2nd Respondents and on Mr. V. M. Guruswamy, Proctor for the 3rd and 4th Respondents and by obtaining the signatures of the said Proctors thereto as will appear from the notice and affidavits annexed hereto and marked A, B and C. 20

Wherefore the Petitioners-Applicants pray :—

(a) That Your Lordship's Court may be pleased to grant them conditional leave to appeal against the said judgment and decree of this Court pronounced on the 17th day of May, 1944, to His Majesty the King in Council.

(b) For costs of this application, and

(c) For such other and further relief as to Your Lordship's Court shall seem meet.

(Sgd.) M. A. VANDERWALL,
Proctor for Petitioners-Applicants.

No. 34.
Decree of the
Supreme Court
granting Con-
ditional leave to
appeal 5-9-45.

No. 34.

30

Decree of the Supreme Court Granting Conditional Leave to Appeal.

Action No. 45415 (S. C. No. 246). District Court of Kandy.

In the matter of an application by the Plaintiffs-Applicants abovenamed dated 5th December, 1944, for conditional leave to appeal to His Majesty the King in Council against the decree dated the 17th May, 1944 (246).

This matter coming on for hearing and determination on the 24th day of May, 1945, before the Honourable Mr. A. E. Keuneman, K.C., and the Honourable Mr. E. G. P. Jayatileke, K.C., Puisne Justices of this Court in the presence of Counsel for the Petitioners and Respondents :

It is considered and adjudged that this application be and the same is hereby allowed upon the condition that the applicants do within one month from this date:--

No. 34.
Decree of the
Supreme Court
granting Con-
ditional leave to
appeal 5-9-45—
Continued.

1. Deposit with the Registrar of the Supreme Court a sum of Rs. 3,000 and hypothecate the same by bond or such other security as the Court in terms of section 7(1) of the Appellate Procedure (Privy Council) Order shall on application made after due notice to the other side approve.

2. Deposit in terms of provisions of section 8 (a) of the Appellate Procedure (Privy Council) Order, with the Registrar a sum of Rs. 300 in respect of the fees mentioned in section 4 (b) and (c) of Ordinance No. 31 of 1909 (Chapter 85).

Provided that the applicants may apply in writing to the said Registrar stating whether they intend to print the record or any part thereof in Ceylon, for an estimate of such amounts and fees and thereafter deposit the estimated sum with the said Registrar.

Witness the Honourable Mr. Francis Joseph Soertsz, K.C., Acting Chief Justice at Colombo, the 5th day of September in the year of our Lord One Thousand Nine Hundred and Forty-five and of our Reign the Ninth.

(Sgd.) CLARENCE de SILVA,
Registrar.

20

No. 35.

Petition for Final Leave to Appeal to the Privy Council.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

D. C. Kandy No. 45415.

1. PIYARATANA UNNANSE and
2. AMUNUGAMA RATANAPALA UNNANSE of Degaldoruwa
Vihare in Lower Dumbara.....*Plaintiffs.*

vs.

1. WAHAREKA SONUTTARA UNNANSE
- 30 2. WAHAREKA GUNARATANA UNNANSE
3. AKWATTE DEWAMITTA UNNANSE
4. MADUGALLE SEELAWANSA UNNANSE, all of Malwatta
in Kandy.....*Defendants.*

No. 35.
Petition for
Final leave to
appeal to the
Privy Council
5-10-45.

No. 35.
Petition for
Final leave to
appeal to the
Privy Council
5-10-45—Con-
tinued.

1. WAHAREKA SONUTTARA UNNANSE
2. WAHAREKA GUNARATANA UNNANSE, both of Malwatta
in Kandy...1st and 2nd Defendants-Appellants to the Supreme Court.

vs.

1. PIYARATANA UNNANSE
2. AMUNUGAMA RATANAPALA UNNANSE, both of Degal-
doruwa Vihare in Lower Dumbara.....Plaintiffs-Respondents.

and

3. AKWATTE DEWAMITTA UNNANSE
4. MADUGALLE SEELAWANSA UNNANSE, both of Malwatta 10
Vihare in Kandy.....3rd and 4th Defendants-Respondents.

1. PIYARATANA UNNANSE and
2. AMUNUGAMA RATANAPALA THERO of Degaldoruwa
Vihare in Lower Dumbara.....Petitioners-Applicants for Leave to
appeal to Privy Council (Plaintiffs).

vs.

1. WAHAREKA SONUTTARA UNNANSE (deceased).
 2. WAHAREKA GUNARATANA UNNANSE
 3. AKWATTE DEWAMITTA UNNANSE
 4. MADUGALLE SEELAWANSA UNNANSE, all of Malwatta 20
in Kandy.
 5. WAHAREKA SOBITHA UNNANSE and
 6. WAHAREKA RATANAPALA UNNANSE } 5th and 6th substituted
in place of 1st Respond-
ent (deceased).
- Respondents to the Application for Leave to Appeal to Privy Council.*

To

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

On this 5th day of October, 1945.

The humble petition of Amunugama Piyaratana Unnanse and Amunugama 30 Ratanapala Thero Petitioners-Applicants abovenamed appearing by their Proctors Michael Arnoldus Vanderwall and his Assistant Meyappen Ramaswamy Somasunderam sheweth as follows :—

1. The Petitioners-Applicants abovenamed obtained conditional leave on the 5th day of September, 1945, to appeal to His Majesty the King in Council from the judgment of this Court dated the 17th day of May, 1944.

2 The Petitioners-Applicants have in compliance with the conditions on which leave was granted deposited a sum of Rupees Three Thousand (Rs. 3,000) with the Registrar of this Court being the security for costs on the 4th of October, 1945, and mortgaged and hypothecated the said sum of Rupees Three Thousand (Rs. 3,000) with the said Registrar on the 5th day of October, 1945. The Petitioners-Applicants have further deposited with the Registrar of this Court a sum of Rupees Three Hundred in respect of the amounts and fees mentioned in section 4 (2) (b) and (c) of the Privy Council Ordinance on the 4th day of October, 1945.

No. 35.
Petition for
Final leave to
appeal to the
Privy Council
5-10-45—Con-
tinued.

10 Wherefore the Petitioners-Applicants pray that they be granted final leave to appeal against the said judgment of this Court dated the 17th day of May, 1944, to His Majesty the King in Council, for costs and for such other and further relief as to Your Lordship's Court shall seem meet.

(Sgd.) M. A. VANDERWALL,
Proctor for Petitioners-Applicants.

20 "I hereby certify that the applicants have complied with the conditions imposed under Rule 3(a) of the scheduled rules, *i.e.*, that they have deposited on the 4th day of October, 1945, and hypothecated by bond the sum of Rupees Three Thousand (Rs. 3,000) on account of security for costs of appeal in terms of section 7 (1) of the Appellate Procedure (Privy Council) Order, 1921, and has deposited a further sum of Rupees Three Hundred (Rs. 300) as cost of transcribing the record in terms of section 8 (a) of "The Appellate Procedure (Privy Council) Order, 1921."

(Sgd.) CLARENCE de SILVA,
Registrar, Supreme Court.

5th October, 1945.

No. 36.

Decree Granting Final Leave to Appeal

No. 36.
Decree granting
Final leave to
appeal 22-10-45.

District Court, Kandy.

30 Action No. 45415 (S. C. 246).

In the matter of an application by the Plaintiffs-Applicants abovenamed for final leave to appeal to His Majesty the King in Council against the decree dated 17th May, 1945 (246).

This matter coming on for hearing and determination on the 22nd day of October, 1945, before the Honourable Mr. Francis Joseph Soertsz, K.C., Acting Chief Justice and the Honourable Mr. A. R. H. Canekeratne, K.C., Puisne Justice of this Court in the presence of Counsel for the Petitioners and Respondants.

No. 36.
Decree granting
Final leave to
appeal 22-10-45
—Continued.

The Applicants having complied with the conditions imposed on them by the order of this Court dated 5th September, 1945, granting conditional leave to appeal.

It is considered and adjudged that the Applicant's application for final leave to appeal to His Majesty the King in Council be and the same is hereby allowed.

Witness the Honourable Mr. Francis Joseph Soettség, K. C., Acting Chief Justice at Colombo on the 22nd day of October, in the year of our Lord One Thousand Nine Hundred and Forty-five and of our Reign the Ninth.

(Sgd.) N. NAVARATNAM,
Dy.-Registrar, S.C.

PART II

EXHIBITS

PART II
EXHIBITS

Exhibits.
No. P 3.
Deed
No. 5962
11-9-1844

No. P3.

Deed No. 5962.

(True Copy of Deed.)

Paraveni Deed executed at Kandy on the 11th September, 1844.

Belonging to me, the undersigned Mahalle Sobitha Unnanse, residing in Malwatta Vihare, every room and the timber and all other substance therein which are in the Pansala of Moratota Mahanayake Priest in the Malwatta
 10 Vihare, Kandy, and the garden with fruit-bearing trees belonging to that Pansala of one amunam paddy sowing in extent, Menikcumbura of 3 amunams paddy sowing, the two gardens on either side of the said field and surrounded by drains cut and the plantations thereon, situate in Yatiwawala in Kulugammanasiapattu of Harispattu and the Sannas relating to that land. Further Asweddun Kumbura of 2 pelas paddy sowing and the planted garden belonging thereto of 6 kurunies paddy extent situate in Beragama alias Arambegama in Medasiapattu of Sarasiapattu. Deniya Kumbure of 3 pelas paddy, Wewalagoda Deniya of 8 lahas, Koskoladeniya of 6 lahas paddy and the planted land with
 20 the granary situate in Walgowwagoda in Yatinuwara Kandupalata. All these high and low lands and everything included therein I Mahalle Sobitha Unnanse, pupil of Moratota Rajaguru Dharmaskanda Mahanayake Priest having undisturbedly possessed for thirty years without any dispute, and which lands are worth 800 pathagas or £60, Ceylon Currency (Government Currency) at present, I am desirous, while I am in good health, of giving and pleased to give all the said lands to my pupil Paranatala Ratanapala, Junior (Kuda Unnehe) and the two Samaneras, Dunumale and Parusala, I the said Mahalle Sobitha Unnanse cause this deed to be drawn and signed and giving have given determining that all the said lands may be possessed undisturbedly
 30 by my pupil the said Paranatala Ratanapala Unnehe and the two Samaneras called Dunumale and Parusala. Neither have I in this manner or in any other manner given to any other person heretofore *nor* shall I give in future. Declaring that neither my relations nor my related pupils or succeeding pupils nor any one else shall dispute with these my three pupils either by word or deed, I the said Mahalle Sobitha Unnanse caused this deed to be drawn and signed same and granted to these three persons Paranatala Ratanapala Unnehe and the two Samaneras Dunumale and Parusala.

(Sgd.) MAHALLE.

Exhibits.
No. P 3.
Deed
No. 5962
11-9-1844
—Continued.

Witnesses hereto are—

WEWALA alias TELWATTE SUMANGALA UNNANSE of
Malwatta Vihare, Kandy.

THIMBIRIWEWE SUMANGALA UNNEHE of Malwatta Vihare,
Kandy, and

WELEGEDARA YAPA MUDIANSSELAGE KIRI BANDA
KORALE of Pallepone Korale in Kotmale.

(Sgd.) WEWALA SUMANGALA.

(Sgd.) THIMBIRIWEWE SUMANGALA.

(Sgd.) W. K. BANDA.

10

I, KORALLAGE DON ANDRIS JOHAN APPUHAMI, Sinhalese
Notary Public of Kandy District, signed and set my seal as having been
written by me after openly reading and explaining in the presence of the
above witnesses.

(Sgd.) D. A. JOHAN,
Public Notary.

Date of Attestation : 11-9-1844.

Translated,

(Sgd.) RODRIGO,

7-11-35.

No. P1.

20

Deed No. 11006.

(True Copy.)

No. P 1.
Deed No. 11006
7-5-1849.

The Paraveni Deed executed at Kandy on the 7th May, 1849.

Belonging to me the undersigned Paranatala Ratanapala Unnanse residing
in Malwatta Vihare, the Degaldoruwa Viharasthana in Amunugama in
Udagampaha in Dumbara of Central Province, which was caused to be built
by the Great King Sri Rajadhi Rajasinghe and having dedicated to it much
wealth consisting of high and low lands and movables and immovables
and having caused a Copper Sannas to be written inscribing that the pupillary
succession (Sissiya Sissiyanu Paramparawa) of Moratota Rajaguru Dharmas- 30
kanda Maha Nayake Priest, shall be firmly established in perpetuity even
until the final disappearance of the religion, the said King upon the Copper
Sannas dated the Saka Year 1708 offered it to the said Moratota Nayake Priest.
From that date the said Nayake Priest possessed and gave it to his pupil
Dunumale Seelavaksha Samidaruo, and his eldest brother's son Paranatala
Anunayake Unnanse who became a related pupil. Since then the said two
persons possessed and upon the Talipot dated Saka Year 1735 gave the
said Viharasthana to their pupil Paranatala Ratanapala alias Malahoruwe
Sonuttara Unnanse who was related to both of them. The said Sonuttara
Unnanse possessed this Vihare undisturbedly and when he was about to die, 40
gave as a heritage upon Thalpath dated Saka Year 1746 to me Paranatala

Ratanapala Unnanse youngest brother pupil. Since then this Vihare which, I of my own single will possessed for twenty-five years undisputedly and belonging thereto the Ninda Muttottu Kamburutempatha Amuna, Palle Amuna, Uda Amuna, Meegonkottuwekumbure in Dunuwille Viharagama in Udagampaha, Balawitabada, Sarasiyapattu and Gamvasan Pangu, Nila Asweddun, Anila (non-nila) Asweddun, low lands fields about 12 amunams in extent, all the high and low lands, houses, gardens and plantations in Viharagama, Athirahapitiyawela in Matale of 16 amunams paddy sowing and all the high and low lands, houses, gardens and plantations, Uradeniye Gane-
 10 kumbura, Dahanayakayage Cumbura, Gederawele Aswedduma, Tumpokuna Kumbura, Dalukkotuwa of five pelas, Etambagahakumbura of 2 pelas, Karawliyadde Nikamada Aswedduma and the appurtenant high and low lands, houses, gardens and plantations. Hewahete Kapuliyadde Kahala Kalawa of two amunams paddy, Hanguranketha Amagete 6 pelas paddy, Madanwela Mililaweyata 6 pelas paddy, Pihilithuduwa six pelas paddy, Pihilithaduwa of two pelas paddy, Arawe 1 pela paddy, Ambanbokka of one pela paddy. This Gampanguwa consisting of these six amunams paddy sowing extent including the high and low lands, houses, gardens, plantations, all the movable and immovable property belonging to this Vihare, the
 20 Sannasas and Thalapatha relating to this Vihare, the Notarial Deeds No. 2743, dated 13th March, 1838, No. 6166, dated 10th December, 1844, No. 5927, dated 24th August, 1844, No. 5761, dated 25th June, 1844, the certificate of exemption from taxes dated 2nd August, 1835. I the said Paranatala Ratanapala Unnanse having undisturbedly possessed up to date all the said lands together with all the said Document worth £150 Ceylon Currency and as I am disrobing myself owing to being appointed to an Office under Government, I do hereby give and have given the said Degaldoruwa Vihara-
 sthana, and the lands, houses, gardens to my relative and pupil Malahoruwe alias Paranatala Sumana Unnanse, Malahoruwe alias Paranatala Ratanapala
 30 Samanera Unnehe, Fruselle Sumanera Unnehe and Sirimalwatte Sumangala Samanera Unnahe, to these four and to their pupillary successors to be owned and possessed and give over to these four persons all my right, title and interest in and to the same and the requirements made are :—

The abovenamed four persons shall improve the Pansala which belonged to the Malwatta Vihare Moratota Nayake Unnanse and not allow it to go to ruins ; any considerable or important work, etc., might be done from the Kandy Pansala through the tenants or subjects of this Degaldoruwa Vihare ; the customary Rajakariya presents " brought " by the tenants shall be accepted after they are shown to the one of the four persons who is
 40 officiating in the Vihare ; for the improvements of this Vihare and its property even one of these four persons may openly and with the consent of all four spend monies for doing what has to be done in respect of this place ; the said three persons, Sumana, Ratanapala and Parusala shall accept the counsel and advice of the fourth Sirimalwatte Sumangala, and all four shall act in agreement and unity, and the said Sirimalwatte Sumangala shall during all his life be the principal and head of the said other three persons and continue

Exhibits.
 No. P 1.
 Deed No. 11006
 7-5-1849
 —Continued.

Exhibits.
No. P 1.
Deed No: 11006
7-5-1849
—Continued.

to act as such in respect of the duties of this Vihare, none of the four owners shall make over or execute any documents in favour of anyone respecting this Vihare and its Gampanguwa and houses and gardens, plantations, etc., individually or singly, reciting their rights separately, it shall be possible for the four persons by agreement and consent, or for him who survives to make over this Vihare on documents but without varying the terms of the Sannasas. I Paranatala Ratanapala Unnanse give over all my right, title and interest to the said Sumana, Ratanapala, Parusala and Sirimalwatte, only in order that they the said four persons shall perpetuate my Sissiya Sissiyanu Paramparawa. These four persons shall be at liberty to place 10 in this Vihare either one or two priests whom they like, of the sect to which Moratota Nayake Priest belonged. I disinherit him or those who dispute anything included in this grant and make over to the said four persons making them owners. In witness whereof I Paranatala Ratanapala Unnanse set my seal and signature to three writings of the same tenor and grant and have granted to the said Sumana, Ratanapala, Parusala and Sirimalwatte.

(Sgd.) RATANAPALA.

Witnesses :—

(Sgd.) PARACUMBURE
 „ BUDDHARAKKHITHA 20
 „ THIMBIRIWEWE VIPASSI
 „ NILAGAMA BUDDHARAKKHITHA
 „ WEWALA SUMANGALA
 „ B. W. K. M. RANGHAMY
 „ APPUHAMI
 „ MOHOTTALA
 „ (Illegible signature).

I, Korallage Don Andris Johan Appuhamy, Notary Public for the Kandy and other Districts, do hereby certify that after I properly read and explained the contents of this Deed above written, the said Paranatala Ratanapala 30 Unnanse set his seal and signature to three writings of the same tenor as These Presents on the 7th May, 1840, in my presence of the Honourable Paracumbure Vipassi Anunayake, Rambukwelle Buddharakkhitha Unnanse, Thimbiriwewe Vipassi Unnanse, Nilagama Buddharakkhitha Unnanse, Wewala Sumangala Unnanse and of Malwatta Vihare, Kandy, Bibile Wijekoon Herath Mudianselage Ranghamy, Notary, Appuhamy Aratchillaya Satara Korle Dunumale Appuhamy Mohottala and Salawa Badalge Naide Hengidiya.

(Sgd.) D. A. JOHAN,
Notary Public.

Date of Attestation: 7th May, 1840.

No. P2.
Deed No. 11004.

Exhibits.
No. P 2.
Deed No. 11004
7-5-1849

(Copy)

The Paraveni Deed executed at Kandy, on the 7th May, 1849.

Belonging to and possessed undisturbedly up to date by me the undersigned Paranatala Ratanapala Unnanse of Malwatta Vihare, Kandy, by right of the Copper Sannas dated Saka Era 1717 granted by my first tutor Balaharuwe Sonuttara Unnanse and my second tutor Mahalle Sobitha Unnanse.

- 10 All the rooms of Moratota Nayake Priest in the Malwatta Vihare, Kandy, and all the timber, that Pansala and the garden belonging thereto of one amunam paddy sowing in extent including all the plantations, the copy of Agreement No. 72, dated 27th May, 1848, by which a sum of £4 per annum was agreed to be paid for the ground covered by the opening on this garden a road leading to Mr. Karshon's house, Menikcumbura, situate in Yatiwawela in Kulugammanasiapattu of three amunams paddy sowing extent, the two gardens on either side of the said field with all the plantations, the aforesaid Copper Sannas for the said land, Asweddun Cumbura of two pelas paddy extent situate in Beragama alias Arambegama in Medasiapattu, 20 the garden belonging thereto of five kurunies paddy sowing and all the plantations thereon, Deniye Kumbura situate in Walgowwegoda in Yatinuwara, Kandupalata of three pelas paddy sowing extent, Wewalagoda Deniya of eight lahas, Koskoladeniya of six lahas paddy in extent and the garden belonging thereto on which stands the granary and the plantations —including all these lands with the Notarial Deed 5962, dated 11th September, 1844, valued at £50. I the said Paranatala Ratanapala Unnanse having possessed all the said lands up to date undisputedly and as I am now giving up robes owing to my being appointed to a post in the Government Service do hereby give and have given the said Kandy Pansala and all the 30 lands, gardens, houses, gardens belonging thereto to the five priests, viz.:—

- Dunumale Sobitha Kuda Unnehe, pupil of Mahalle Sobitha Unnanse and to my pupils who are also related to me, *i.e.*, Balaharuwe alias Paranatala Sumana Unnehe, Balaharuwe alias Paranatala Ratanapala Samanera Unnehe, Parusala Samanera Unnehe and Sirimalwatte Sumangala Samanera Unnehe and to their pupillary succession to be owned and possessed together with my right, title and interest in and to the said property. Thus, giving, the directions are, that the abovenamed five persons shall improve the said Kandy Pansala without allowing it to go to ruins. For the benefit of those out of the five priests who shall always remain in the Pansala, the produce of 40 Yatiwawela Menikcumbura of three amunams and of Arambegama Deniyewatta may be enjoyed and at the rate of two loads of rice every month from Sala Viharagama may be got down to the Kandy Pansala. This Pansala shall be improved with the income derived from the soil and plantation of

Exhibits.
No. P 2.
Deed No. 11004
7-5-1849
—Continued.

the garden belonging to the Pansala. The services of this Pansala shall be caused to be performed by those persons subject to the Salawa Vihare and Degaldoruwa Vihare. The said Dunumale Sobitha Unnehe, Sumana, Ratanapala, Parusala the four persons shall accept and abide by the advice and counsel of the said Sirimalwatte Sumangala, and all five shall act in agreement and conduct themselves peacefully and the said four persons shall during the lifetime of the said Sirimalwatte Sumangala conduct and manage all affairs and matters envisaging this as an original house. None of these five owners shall alienate the said lands, gardens, houses, gardens or plantations of his own individual accord or his individual rights separately, but by consent of the said five persons or by a survivor out of these five it may be done without in any varying the terms of the Sannas. I the said Ratanapala thus make over all my right, title and interest which I have to the said Sobitha, Sumana, Ratanapala, Parusala and Sirimalwatte and give and have given to the said five persons to endorse to their pupillary succession. These five persons may select one or two priests according as they wish from the sect of priests of the Moratota Mahanayake's profession to be placed in this Pansala. Those of any will dispute either by word or deed anything in this grant are hereby disinherited and the said five persons, Sobitha, Sumana, Ratanapala, Parusala, Sirimalwatte are hereby given.

In witness whereof.

(Sgd.) RATANAPALA,

Witnesses:—

1. (Sgd.) PARACUMBURE VIPASSI
2. " BUDDHARAKKHITHA.
3. " THIMBIRIWEWE VIPASSI.
4. " NILAGAMA BUDDHARAKKHITHA.
5. " WEWALA SUMANGALA.
6. " Illegible. In English.
7. " APPUHAMY.
8. " (Illegible)
9. " HANGIDIYA.

I, Korallage Andris Johan of Kandy, Notary Public, do hereby certify that this Deed having been read and explained by me, the said Paranatala Ratanapala Unnanse set his signature on the 7th May, 1849, in my presence and in that of the witnesses Paracumbure Vipassi, Namabhimana Anunayake Unnanse, Rambukwelle Buddharakkhitha Unnanse, Thimbiriwewe Vipassi Unnanse, Nilagama Buddharakkhitha Unnanse, Wewala Sumangala Unnanse of Malwatta Vihare in Kandy, Bibile Wijeykoon Herat Mudianselage Ranganhamy, Notary, Appuhamy Aratchillage Satara Korle Dunumale Appuhami and Salawa Badalge Hangidiya.

Attested by,

(Sgd.) D. A. JOHAN,
Notary Public.

Translated by :

(Sgd.) Illegibly.

S. T. 9.12.35.

Date of Attestation: 7th May, 1849.

No. D4.

Deed No. 2862

Exhibits.
No. D 4.
Deed No. 2862
7-6-1858

At the Office marked No. 248 in
the Colombo Street of Kandy on
the 7th day of June, A.D. 1858.

Purport of a Lease caused to be written between us the undersigned Parusala Dhammajothy Unnanse of Malwatta Vihare in Kandy within Central Province and Nagal Nayaker the son of Kattoobawa Nayaker of Kandy is as follows :—

10 That the land called Manikcumbura Megodewatta of about six pelas of paddy in extent bounded on the East by the ditch close to the high road, on the South and West by the field and on the North by the limit or ditch of the garden called Walawwewatta and situated at Yatiwawella in Kulugammanasiapattu of Harispattu being the property of me the said Parusala Dhammajothy Unnanse has hereby been leased out to the said Nagal Nayaker, the son of Kattoobawa Nayaker or to his assigns and attorney for the term of 15 years commencing from this date and ending the 7th day of June, 1873, next ensuing that he may possess the same for the said term of fifteen years in any manner he may please, by paying ground tax and pounding paddy
20 and supplying rice as undermentioned and agreed as follows :

That in lieu of ground tax of the said land he shall pound the paddy that shall be given by me the said Parusala Dhammajothy Unnanse at the rate of four bushels per mensem commencing from the 7th day of June, 1860, and shall carry and deliver the rice at the Malwatta Vihare either to me or to anyone of my assigns and attorneys and the Nagal Nayaker or anyone of his assigns, attorneys and shall also pay to me the said Parusala Dhammajothy Unnanse or to anyone of my assigns and attorneys annually without any failure a sum of two pounds sterling and that from this day forth and during the said term of fifteen years the said Nagal Nayaker or
30 anyone of his heirs and assigns shall build upon and plant and improve the said land and enjoy the produce thereof in any manner he may please and that in failure of paying the lease amount and pounding paddy and furnishing rice as aforesaid then and in such a case this lease shall be cancelled and the said land and the plantations shall be resumed possession of as if they had not been leased out but in case he shall furnish rice and pay the lease amount regularly this lease shall not be cancelled from the intent and meaning hereof during the said term of fifteen years. To all these conditions we the said Parusala Dhammajothy Unnanse and Nayaker the son of Kattoobawa Nayaker having mutually consented and agreed and form a deed on that behalf, we
40 have set our signatures and seals to three deeds of the same tenor and date as these presents in the presence of the undernamed Notary Public and in that of the witnesses hereto Wewgonney Vipassi Unnansey of Malwatta

Exhibits. Vihare in Kandy and Don Andiris de Silva Abeysiry Goonewardene Sooria
 No. D 4. Aratchy Appuhamy of Kandy and the said Parusala Dhammajothy Unnanse
 Deed No. 2862 has kept the original hereof in the hands of Nagal Nayaker.
 7-6-1858
 —Continued.

(Sgd.) PARUSALA,
 SEAL.

Mark of (X) NAGAL NAYAKER. Seal.

Signed, sealed and delivered in the presence of us.

Witnesses :

(Sgd.) WEWAGONNE,
 ,, D. A. D. SILVA.

10

I, Don Carolis de Silva Goonetilleke Siriwardena of Kandy, Notary Public, by lawful authority duly admitted within the Central Province of the Island of Ceylon do hereby certify that before me and before the abovenamed witnessess who are known to me the abovenamed Parusala Dhammajothy Unnanse who is known to me and Nagal Nayaker who is unknown to me and both of whom are said to be known to the said witnesses having appeared before me and caused this lease to be written in triplicate of the same tenor as these presents the same was read out and explained by me to them in the presence of the said witnesses after which they set their signatures and seals and the said witnesses signed thereto in my presence and in that of one another the year, month and day and at the Office abovenamed. In witness whereof I have set the seal of my Notarial Office and my signature and granted at my office aforesaid on the 7th day of June, A.D. 1858, and the duplicate hereof was written on a stamp of two shillings.

20

(Seal) (Sgd.) D. C. de SILVA,
Notary Public.

Parusala Dhammajothy Unnanse having applied for a copy hereof I have made, signed and granted this copy at Kandy on the 29th day of August, 1861.

(*True Copy*)

30

(Sgd.) D. C. de SILVA.
True translation.

No. D 5
 Deed No. 4046
 28-12-1860

No. D5.

Deed No. 4046

(*Copy*)

The Indenture of Lease made and entered into by and between Parusala Dhammajothy Unnanse of Meda Pansala in Malwatta, Kandy, the Chief Priest of Degaldoruwa Vihare in Udagampaha of Patha Dumbara in the Central Province of the Island of Ceylon, hereinafter referred to as the first part and Natchi Mutturi-in's son Nalla who has come from the Village known as Muttayan Palayan belonging to the country called Thrisnapulicotte

40

and presently residing at Dunuwila in Sarasiapattu hereinafter referred to as the second part caused to be written and granted at Kandy on this 28th day of December, 1860, purports to wit :—

Exhibits.
No. D 5.
Deed No. 4046
28-12-1860
—Continued.

First. All that property known as Hewangollamada Ambaghamulla Bima of four amunams in paddy sowing in extent belonging to the Degaldoruwa Temple and situated at Dunuwila aforesaid and bounded on the East by Gorokgahamadawatta Agalawatte, on the South by fence of the ditch, on the West by Arambepihille Ela and on the North by Hith tree of the land planted by the said Nalla and belonging to the said temple, the land
10 within these boundaries does hereby leased and demised as follows, unto the said Nalla.

The Lessee shall pay rent from first January, 1861, up to the end of December of the same year the sum of Seven Pounds and Ten Shillings for that year, and thereafter from the first day of January, 1862, up to the end of December, 1878, for eighteen years at the rate of Eight Pounds, the said rent.

Second. Shall be payable yearly from the first day of January, 1861, unto the said Lessor the said Parusala Dhammajothy Unnanse or to his successors of the said Degaldoruwa Temple and proper receipts shall be
20 obtained.

Third. The aforesaid shall land possess by the said Nalla or his heirs and descendants at will and pleasure by planting any kind of plantations during that period.

Fourth. And immediately on the expiration of the said term he shall deliver the same with all the cultivation unto the said Parusala Dhammajothy Unnanse or to his successors peaceably and shall quit the same.

Fifth—In the event of failure or neglect to pay the rents for two years, by reason thereof, this lease shall be determined and shall be cancelled and take charge for the Vihare.

30 And I the said Natchi Muttiri-in's son Nalla do hereby further covenant to observe and perform duly the foregoing conditions.

And the said Parusala Dhammajothy Unnanse and the said Nalla for themselves, their heirs, executors, administrators and assigns do hereby further covenant to observe and perform duly the foregoing conditions and caused this deed of lease to be written and set our signatures and seals hereto in the presence of the subscribing witnesses Arnolis de Silva of Kandy and Neligamage Don Cornelis Appu Mulgampola in Kandy Gangawata set their signatures to this and to three others of the same tenor and date as these presents and have delivered one to the said Nalla and one copy was kept by
40 the said Unnanse.

(Sgd.) PARUSALA,
(Signed in Tamil).

Exhibits.
No. D 5.
Deed No. 4046
28-12-1860
—Continued.

Signed in the presence of the subscribing witnesses :

(Sgd.) Illegibly.
„ CORNELIS.

I, Don Carolis de Silva Gonetilleke of Kandy, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary to the said Parusala Dhammajothy Unnanse, who is known to me and to the subscribing witnesses and to the said Nalla in the presence of the said witnesses and in the presence of one another all being present at the same time at the aforesaid place, date and year. 10

I further certify and attest that I sealed and stamped this instrument on this 28th day of December, 1860, at the aforesaid place and date. Duplicate bears stamps to the value of Five Shillings.

(Sgd.) D. C. de SILVA,

(SEAL.)

No. D 6.
Deed No. 311
21-3-1864

No. D6.

Deed No. 311.

(Copy.)

This Indenture made on the Twenty-first day of March One Thousand Eight Hundred and Sixty-four between Parusala Dhammajothy Unnanse 20 of the Malwatte Vihare in Kandy of the one part and Cecil William Ferdinands, also of Kandy of the other part.

Witnesseth :

That in consideration of the rent covenants, provisos and agreements hereafter reserved and contained and which on the part and behalf of the said Cecil William Ferdinands, his executors, administrators and assigns are to be paid, done and performed he the said Parusala Dhammajothy Unnanse hath demised, leased and granted and by these presents, doth demise, lease and grant unto the said Cecil William Ferdinands, his executors, administrators and assigns all that piece or parcel of land or ground forming a road of twenty 30 feet in breadth and lying between the Lower Lake Road and the premises of the said Cecil William Ferdinands in the town of Kandy. To have and to hold the said piece of ground to the said Cecil William Ferdinands, his executors, administrators and assigns with its appurtenances as a free and convenient road twenty feet in breadth from the first day of January last past for and during and unto the full end and terms of 25 years from thence next ensuing and fully to be completed and ended yielding and paying therefor during the said term unto the said Parusala Dhammajothy Unnanse, his heirs

and assigns, the yearly rent or sum of One Pound of lawful money of Ceylon, the rent for the first five years of the said term commencing from the first day of January, 1864, being paid in advance and the rest of the payments to be made yearly and at the end of every year during the said term to wit on the Thirty-first day of December of each year. Provided, nevertheless, that if it shall happen that the said several yearly rents hereby reserved shall be behind and unpaid by the space of thirty days next over or after the same or to be paid as aforesaid the same having been demanded in writing then and in such case it shall and may be lawful to and for the said Parusala Dhammajothi Unnanse, his heirs and assigns to demand, recover and have from the said Cecil William Ferdinands, his executors, administrators and assigns, double the amount of rent so remaining unpaid as aforesaid and further that the said Cecil William Ferdinands, his executors, administrators and assigns shall not nor will at any time or times during the subsistence of the present lease widen the said road beyond its present width of twenty feet or block up any ditch or ditches that be in or on either side of the hereby demised premises but shall preserve and keep in good order and condition for the free passage of water therein and the said Cecil William Ferdinands and his aforesaid shall, moreover, have no right to cut the land adjoining the premises hereby assigned on either side or the trees thereon, or to do any other act, matter or thing in respect thereof without the permission in writing of the said Parusala Dhammajothi Unnanse and his aforesaid and the said Cecil William Ferdinands for himself and his aforesaid covenant, promise and agree to and with the said Parusala Dhammajothi Unnanse and his heirs and assigns that the said Cecil William Ferdinands and his aforesaid shall and will at the expiration of the said term hereby granted peaceably and quietly leave, surrender and yield up the said piece or parcel of ground with all the improvements thereon unto the said Parusala Dhammajothi Unnanse, his heirs and assigns and that the said Parusala Dhammajothi Unnanse for himself, his heirs and assigns doth hereby covenant, promise and agree to and with the said Cecil William Ferdinands, his executors, administrators and assigns that the said Cecil William Ferdinands and his aforesaid shall and may lawfully peaceably and quietly have hold and occupy the said piece or parcel of ground and premises hereby demised with their and every of their appurtenances for and during the said term of twenty-five years hereby granted without any lawful let, hindrance, denial or interruption of or by the said Parusala Dhammajothi Unnanse, his heirs or assigns.

In witness whereof the parties hereto have set their hands and seals hereunto and to two others of the same tenor and date as these presents at Kandy aforesaid in the day, month and year in the beginning hereof written.

In presence of:

(Sgd.) E. L. SIEBEL. (Sgd.) CECIL WM. FERDINANDS.
 (Sgd.) H. A. RODRIGO. (Sgd.) PARUSALA (In Sinhalese).

Exhibits.
 No. D 6.
 Deed No. 311
 21-3-1864.
 —Continued.

Exhibits.
No. D 6.
Deed No. 311.
21-3-1864
—Continued

No. 311.

I, John Boyle Siebel of Kandy, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me to Parusala Dhammajothi Unnanse and Cecil William Ferdinands therein-named in the presence of Messieurs Edmund Lawson Siebel and Henry Arnoldus Rodrigo, the subscribing witnesses thereto both of Kandy, and known to me the same was signed by the said Parusala Dhammajothi Unnanse and Cecil William Ferdinands and witnesses in my presence and in that of one another at Kandy aforesaid on the day, month and year therein written.

10

Which I attest,

(SEAL).

(Sgd.) J. B. SIEBEL,
Notary Public.

No. D7.

Deed No. 142.

No. D 7
Deed No. 142
28-2-1868

The Deed of Agreement caused to be written and granted at Kandy on this 28th day of February, 1868, purports, to wit :—

The agreement made and entered into by and between Parusala Dhammajothi Unnanse of Meda Pansala in Malwatte, Kandy, the Chief Priest of Degaldoruwa Vihare in Udagampaha of Patha Dumbara in the District of Kandy, Central Province, of the Island of Ceylon hereinafter referred to as the party of the first part and Waragoda Kankanamalage Don Simon Alwis Appuhamy, presently residing at Yatiwawala in Kulugammanasiapattu of Sarasiapattu who has come from Pethiyagoda in Adikaripattu of Siyanekorale hereinafter referred to as the party of the second part.

Witnesseth :—

Firstly : I the said Parusala Dhammajothi Unnanse possessed the following :—

All that portion known as Menikcumbura Megodawatta of about five pelas paddy sowing extent situate at Yatiwawala in Kulugammanasiapattu of Sarasiapattu and bounded on the East by the high road leading to Matale, South by the limit of the garden planted by Sinnathamby belonging to Yatiwawala Walawwa, West by the limit of the hena belonging to Vitharagedera Banda and on the North by Menikcumbura.

That the said Waragoda Kankanamalage Don Simon Alwis Appuhamy shall build twelve houses in a line on the ground opposite to the high road at his own expense and cost within a period of one year from the date of this bond as follows :—Each room shall be twelve feet in length and nine feet in breadth, the walls must be made in bricks with lime, the plastering shall be done with lime, thereafter he shall whitewash the same, that, out of the two verandahs the front verandah shall be eight feet in breadth, the verandah towards the garden shall be six feet in breadth, it shall be done according

to the length of the house ; the above works of the house shall be with good timber sawn 4×5 inches and 2½×4. The beams and rafters, after the whole work is completed, he shall thatch the same with tiles.

Exhibits.
No. D 7.
Deed No. 142
28-2-1868
—Continued.

Secondly: For the expenditure and costs incurred by the said Waragoda Kankanamalage Don Simon Alwis Appuhamy, he shall possess the said land with the plantations and shall take all the produce and profits of the said houses for a term of six years.

Within that period he shall not mortgage or shall not stand for security or assign the said rights, nor no one can sell or dispose of the same for any
10 of his debts within that period.

Thirdly: And that in the event of the failure or neglect to build up the said buildings as aforesaid within that period the said Waragoda Kankanamalage Don Simon Appuhamy shall pay by way of damages unto the said Parusala Dhammajothi Unnanse a sum of fifty-seven pounds and shall vacate the said premises immediately.

Fourth: That the said Waragoda Kankanamalage Don Simon Appuhamy shall possess and enjoy all the benefits and produce for the said term of five years and immediately on the expiration of the said terms he shall without demanding any compensation for improvements or troubles deliver the
20 same unto the said Parusala Dhammajothi Unnanse peaceably and shall quit the same.

And that the said 1st and 2nd party for themselves and their respective heirs, executors, administrators and assigns do hereby further covenant to observe and perform duly the foregoing conditions and cause this agreement to be written and set our signatures to this and to two others of the same tenor and date a these presents and the original was kept with the said Waragoda Kankanamalage Don Simon Allis Appuhamy in the presence of the subscribing witnesses: Wewagonne Vipassi Unnanse of Malwatte Vihare in Kandy, Don Andiris Perera Appuhamy of Siyambalagastenna in Gangawata
30 Korale of Yatinuwara.

Witnesses :

(Sgd.) WEWAGONNE

(Sgd.) PARUSALA

(Sgd.) DON ANDIRIS PERERA

(Sgd.) DON SIMON ALLIS.

I, Don James Armanis de Silva Siriwardane, Notary Public of Kandy, Central Province, of the Island of Ceylon, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary to the said both parties in the presence of the said witnesses set their signatures in my presence and in the presence of one another, all being present at the same time at Kandy on this twenty-eighth day of
40 February, 1868.

The duplicate of this bears stamps to the value of Five Shillings.

SEAL.

(Sgd.) D. D. S. SIRIWARDANE,
Notary Public.

Endorsement.

Exhibits.
No. D 7.
Deed No. 142
28-2-1864—
Continued.

I the undersigned Waragoda Kankanamalage Don Simon Appuhamy have failed to build the houses as per paragraph one of this Deed the said land and other things standing thereon do hereby granted to the said Parusala Dhammajothi Unnanse, who agreed and undertook not to recover any damages from me and we both signed hereto on this 13th day of February, 1871, at Kandy.

Witnesses :

(Sgd.) J. B. SIEBEL.

(Sgd.) DON LUWIS ALWIS,
(Illegibly)

10

(Sgd.) H. A. RODRIGO,

(Sgd.) PARUSALA.

No. D 8.
Deed No. 7884
29-7-1873

No. D8.

Deed No. 7884.

The Deed of Lease caused to be written and granted at Kandy on this 29th day of July, 1873, purports to wit :—

I the undersigned Parusala Dhammajothi Unnanse of Meda Pansala in Malwatte in Kandy, Central Province, of the Island of Ceylon am possessed the following belonging to Degaldoruwa Vihare in Udagampaha of Patha Dumbara.

All that land called Hemurewatte of about two acres in extent situate 20
at Atirahapitiya in Udasiapattu of Matale and bounded on the East by the
fence of the hena belonging to Ratwatte Walawwa, on the South by the jak
tree standing on the remaining portion of this land, West by Hemure
Cumbureweilla and on the North by the fence of the garden belonging to
the Ratwatte Walawwa and the fence of Meera Saibo's garden, the land within
these boundaries have cultivated by Magadu Lebbe Magadu Marikar of
Hemure in Matale aforesaid at his own cost, expense, therefore, I do hereby
lease and demise unto him the said premises for a term of 85 years from the
date hereof at a rental of Rs. 15 per year, for and in consideration of the sum
of Rupees One Thousand Two Hundred for the full term. 30

As he has cultivated the whole land at his own expense I allow him to
possess the said premises free of rent for a term of five years.

Thereafter the said Magadu Marikar shall pay the eighty years' rent at the rate of Rs. 15 per year on behalf of the said Vihare unto the said Parusala Dhammajothi Unnanse and proper receipts shall be obtained.

Exhibits,
No. D 8.
Deed No. 7884
29-7-1873—
Continued

In the event of the failure or neglect to pay the rent after the expiration of the said term of five years by reason thereof this lease shall be cancelled and that the said Parusala Dhammajothi Unnanse shall take possession of the said premises on behalf of the said Vihare and he shall recover the rent that was not paid by action.

And immediately after the expiration of the said term of eighty years, he shall deliver the said premises unto the said Parusala Dhammajothi Unnanse on behalf of the said Vihare and shall quit the same.

In the event of any dispute occurring in respect of this during the said term the said Parusala Dhammajothi Unnanse on behalf of the said Vihare shall warrant and defend the title and settle such disputes and that the said Parusala Dhammajothi Unnanse and the said Magadu Marikar having agreed to the above conditions and covenants set their signatures to this and to two others of the same tenor and date as these presents and kept two copies with the two persons and they were signed in the presence of the subscribing witnesses : Wathalath Achchillagedera Punchirala Muhandiramala of Pilawala in Udagampaha of Pathe Dumbara and Mohideen's son Mohammedu Hameed Saibo of Kandy.

(Sgd.) PARUSALA,
(In Tamil)

Witnesses :

1. (Sgd.) PUNCHIRALE.
(In Tamil)

I, Don Carolis de Silva Goonetilleke of Kandy, in the Central Province of the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary to the said Parusala Dhammajothi Unnanse and Magadu Marikar, the first of whom is known to all and the second is unknown to me in the presence of the subscribing witnesses set their signatures in my presence and in the presence of one another at one time in Kandy Office on the 29th day of July, 1873. The duplicate of this instrument bears stamps to the value of Rs. 3/75 and two copies bears each a rupee, which stamps were supplied by me.

Which I attest.

SEAL.

(Sgd.) D. C. de SILVA,
Notary Public.

No. D9.

Deed No. 3985

The Deed of planting agreement, caused to be written and granted at Kehelle on this fifteenth day of March, 1875, purports to wit :—

I the undersigned Parusala Dhammajothi Unnanse of Meda Pansala in Malwatte, Kandy, in the Central Province, am held and possessed by right of inheritance from my master the following :

All that two pelas paddy sowing in extent from and out of the land called Menikcumbura, Egodawatta situate at the village called Yatiwawala in Kulugammanasiapattu of Harispattu and bounded on the East by above 10 the field, on the South by the school wall up to Sapu trees, on the West by the fence of the garden owned by Korale Mahatmaya and the fence of the hena belonging to Viharagedera Kalu Banda and on the North by above the field, the land within these boundaries granted to Wisala Mogonbenjiman Kanakapulle and to Ramalingam's son Muttusamy both of Yatiwawala aforesiad for plantation as follows :

First: That the said two persons shall get the said premises weeded and shall put up fences at their cost and expense all round, and shall plant coffee plants according to the custom of this country and shall manure them together with the coconut plantation planted by me and shall complete the 20 whole plantation within a period of three years.

Second: That the said two persons shall possess the said premises within that period of three years at their will and pleasure, thereafter they shall possess the said premises and enjoy half of the benefits and produce equally for a term of four years, the remaining half share shall be given to me after the expiration of seven years, they shall quit and vacate the said land and premises with all the plantations.

Third: In the event of the failure or neglect to plant the said land within a period of three years they shall complain to the headman and he shall value the damages and the said party shall pay me Rs. 50 by way 30 of damages after the valuation and shall cancel and revoke the said deed of plantation in the event of any dispute occurring in respect of the said plantation I shall warrant and defend the title and settle such disputes, in failure I shall pay their costs and expense of the plantations.

Fourth: And that the said two persons shall not mortgage or stand as security or sell or lease the said premises within that period.

Fifth: And that the said Parusala Dhammajothi Unnanse and planters Benjamin Kanakapulle and Muttusamy, their respective heirs, executors, administrators do hereby further covenant to observe and perform duly

the foregoing conditions and caused the Deed of plantation to be written and set our hands to this and to two others of the same tenor and date as these presents and have delivered unto the said planters.

Exhibits.
No. D 9.
Deed No. 3985
15-3-1875—
Continued.

(Sgd.) PARUSALA,
(In Tamil)
with a X mark
MUTTUSAMY.

Witnesses :

(Sgd.) Illegibly.
(In Tamil)

(Sgd.) AKWATTE PUNCHI BANDA,

10 School Master of Yatiwawala in Kulugammanasiapattu of Harispattu and Ramasamy of Ranawana.

I, Lokugei Carolis Simon de Silva Chitranayake, Notary Public of Kandy, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary to the said Parusala Dhammajothi Unnanse and to the said witnesses in my presence and in the presence of the said witnesses at the aforesaid place and date. I further say that the duplicate bears two stamps to the value of Rs. 2/50 supplied by me.

(SEAL)

(Sgd.) L. C. S. SILVA CHITRANAYAKE,
N.P.

20

No. P 4.

Plaint in D. C. Kandy, Case No. 81630

IN THE DISTRICT COURT OF KANDY

PARUSALA DHAMMAJOTHI UNNANSE of Malwatte Vihare in Kandy.....*Plaintiff.*

vs.

1. TIKIRI BANDA PARANATALA of Kandy.
2. PILAWALA DHAMMADASSI UNNANSE, and
3. AMOONEGAMA RATANAPALA UNNANSE both of Degaldoruwa Vihare in Lower Dumbara.....*Defendants.*

20

No. 81630

On this the Twenty-seventh day of March One Thousand Eight Hundred and Seventy-nine.

The libel of the Plaintiff abovenamed by John Boyle Siebel, his Proctor, sheweth :—

That Paranatala Ratanapala Unnanse being the Incumbent amongst others of the Degaldoruwa Vihare and entitled to the endowments thereof did on

No. P 4.
Plaint in D.C.
Kandy, Case
No. 81630
27-3-1879.

Exhibits.
No. P 4.
Plaint in D. C.
Kandy, Case
No. 81630
27-3-1879--
Continued.

the seventh day of May, 1849, by his Deed bearing that date (a copy whereof is herewith filed marked A undertaking to produce the original on the day of trial) grant the same to his four pupils, *viz.* :—Paranatala Sumana Unnanse, Paranatala Ratanapala Unnanse, Parusala Sumanera Unnanse the Plaintiff and Sirimalwatte Sumangala Unnanse jointly and to the survivor of them, and their pupillary descendants for generations.

That the said grant was made to the said four pupils who then entered into possession thereunder, subject to certain conditions in the said Deed set forth, one of the conditions being that the last survivor of the said four pupils shall have the right of disposing of the said Vihare in terms of the Sannas referred to in the said Deed as will be seen on reference to the said Deed which the Plaintiff prays may be taken and read as part of this libel. 10

3. That the said Sirimalwatte Sumangala Unnanse disrobed himself in 1857, and that the said Paranatala Unnanse continued to be a co-incumbent with the other grantees in terms of the said Grant until the year 1851, when he disrobed himself and proceeded to the District of Sattaragam and lived there as a layman for nearly two years, when the Plaintiff brought him back and robed him as his pupil.

4. That thereafter the said Paranatala Unnanse continued to reside for some time with the Plaintiff, as his pupil at the Malwatte Vihare in Kandy and at Menikcumbura Pansala in Harispattu during several years and thereafter he, the said Paranatala Sumana Unnanse, with the consent and permission of the Plaintiff proceeded to Selewa in four Corales in the year 1873 and took charge of the Selewa Vihare as Officiating priest thereof and administered the affairs of the said Vihare until he was recalled by the Plaintiff to the Degaldoruwa Vihare in July, 1877, where he resided until his death which occurred in June, 1878. 20

5. That from the date of the said Grant, the said Paranatala Ratanapala Unnanse (the Plaintiff's co-grantee) resided at the Degaldoruwa Pansala and officiated at the said Vihare, whilst the Plaintiff as joint Incumbent administered the affairs of the said temple, collecting the revenues thereof and instituting cases against the tenants of the said temple for non-performance of the services, etc., and the Plaintiff so continued to manage the affairs of the said temple until the death of the said Paranatala Ratanapala Unnanse which occurred in August, 1877. 30

6. That thereupon the Plaintiff as the sole surviving pupil of the said Grantor Paranatala Ratanapala Unnanse and as one of the Grantees under the said Deed became and is now entitled to the possession of the said Vihare and to the endowments thereof. But the Plaintiff says that the second Defendant who has taken possession of the said temple, with the third Defendant, since the death of the said Ratanapala Unnanse in the occupation of the Pansala and refuses to give up the possession thereon and of the temple and his endowments to the Plaintiff, alleging that he holds the same under the orders of the first Defendant for and on behalf of the third Defendant 40

and the first Defendant although often requested hath refused to name his title thereto, or to give up possession of the said temple and its endowments and the property therein and the Plaintiff sayeth that the said Defendants have moreover by their agents and servants taken the produce and profits of the endowments of the said temple to their own use since the death of the said Ratanapala Unnanse to the great loss and damage of the Plaintiff.

Exhibits.
No. P 4.
Plaint in D.C.,
Kandy, Case
No. 81630
27-3-1875—
Continued.

Wherefore the Plaintiff prays that the said Defendants may be cited to show cause why he the Plaintiff should not be declared entitled to and put and placed in possession of the said temple and of endowments thereof and of the property belonging thereto mentioned and set forth in the Schedule B and the lists hereto annexed all being of the value of Forty Thousand Rupees (Rs. 40,000) and the Defendants ejected therefrom and jointly and severally adjudging to pay to Plaintiff the sum of Five Thousand Rupees yearly as and for damages and mesne profits from August, 1877, until possession of the said temple and of its endowments and of the property thereon is delivered to the Plaintiff, and he prays for his costs in this behalf incurred and for such further relief as to the Court shall seem meet.

(Sgd.) J. B. SIEBEL,
Proctor for Plaintiff.

20 FRANCIS BEVEN
for Mr. ADVOCATE EATON,
(Sgd.) FRANCIS BEVEN,
Advocate.

No. P5.
Answer in D. C. Kandy Case
No. 81630

No. P 5.
Answer in D.C.,
Kandy, Case
No. 81630
July, 1879.

Filed: 15th September, 1879.

IN THE DISTRICT COURT OF KANDY.

PARUSALA DHAMMAJOTHI UNNANSE of Malwatte

30 Vihare in Kandy.....*Plaintiff.*

81630 vs.

- 1. TIKIRI BANDA PARANATALA of Kandy,
- 2. PILAWELA DHAMMADASSE UNNANSE and
- 3. AMUNUGAMA RATANAPALA UNNANSE, both of
Degaldoruwa Vihare in Lower Dumbara.....*Defendants.*

On this the —day of July, A.D. 1879.

The answer of the Defendants abovenamed to the libel of the Plaintiff by Charles Vanderwall their Proctor sheweth :—

- 1. They admit that Paranatala Ratanapala Unnanse was formerly the
40 Incumbent of the Degaldoruwa Vihare and in possession of the endowments

Exhibits.
No. P 5.
Answer in D.C.,
Kandy, Case
No. 81630
July, 1879—
Continued.

thereof and also that he executed the Deed pleaded in the first paragraph of the libel. But the Defendants say that the said temple was founded and endowed by Sri Rajadhi Rajasinghe a brother of the late King of Kandy according to whose Sannas then granted the said temple is descendable in the sacerdotal pupillary line subject to such limitations as are imposed by the said Instrument of Dedication and that the Deed pleaded by the Plaintiff is good and binding only in so far as it establishes the line of succession which opened at the granting of the said Sannas.

2. The Defendants say that the grantees mentioned in the said Deed accepted it merely as an Instrument of transmitting title and not as creating a new mode of successions imposing conditions as to the incident of survivorship by which the survivor could succeed to the exclusion of a pupil of a deceased joint Incumbent. 10

3. The Defendants further dispute the efficacy of another provision in the said Deed which gives the last survivor the power of disposing of the temple and say that such a disposition so far from being warranted by the terms of the Sannas is "plainly repugnant both to its letter and spirit."

4. The Defendants admit it to be true that Sirimalwatte Sumangala Unnanse disrobed himself in the year 1857 but they deny either that Paranatala Sumana Unnanse ever threw off the robes or that he was ever robed by the Plaintiff or that he ever became the pupil of the Plaintiff. 20

5. The Defendants admit that Paranatala Sumana Unnanse lived at the Malwatte Vihare in Kandy and at Menikcumbura in Harispattu and afterwards at Selewa in the four Korles, but they deny that he lived at any of these places with the consent and permission of the Plaintiff or that he was recalled to Degaldoruwa Vihare by the Plaintiff.

6. The Defendants also admit that the late Paranatala Ratanapala Unnanse resided in the Degaldoruwa Pansala and officiated at the said temple but they say that the said Paranatala Ratanapala Unnanse was the chief Incumbent and manager of the temple and its affairs whether religious or secular and that the Plaintiff is attending to the purely secular interests of the temple acted as the agent of the said Ratanapala Unnanse and not as Manager. 30

7. The Defendants deny the Plaintiff's title as set forth in the 6th paragraph of the libel and say that according to Buddhist Ecclesiastical law it is competent for one of several co-Incumbents to undertake the sole management of a temple, the other Incumbents being entitled to monastic rights and it is also competent for such chief Incumbent to appoint his own successor in the pupillary line, that the late Paranatala Ratanapala Unnanse was the Manager and chief Incumbent of the Degaldoruwa Vihare and that he as he lawfully might by a Last Will which was proved in the Case No. 1155 of the Testamentary Jurisdiction of this Court and which the Defendants pray may be read as part of the answer gave the incumbency of the said temple to his 40

only pupil the third Defendant who is entitled to succeed to the said incum- bency in preference to the Plaintiff as the chosen successor of the late Parana- tala Unnanse and that the third Defendant by such right is now in the possession of the said temple and such of its property as is enumerated in the schedule appended to the answer through his guardian the second Defendant.

Exhibits.
No. P 5.
Answer in D.C.,
Kandy, Case
No. 81630
July, 1879—
Continued.

8. That the right of the late Paranatala Sumana Unnanse to the said Vihare and its property were conveyed by him upon the Deed herewith produced marked C jointly to the second Defendant who was one of the pupils of Paranatala Ratanapala Unnanse No. 1 and to the third Defendant
10 who became the pupil of the said Sumana Unnanse after the death of the third Defendant preceptor the late Paranatala Ratanapala Unnanse No. 2.

9. That all the sacred books of the temple and the Royal Sannas and the more valuable part of the movable property of the temple are in the possession of the Plaintiff and are to be found at the Malwatte Vihare and that the only movables in the possession of the second Defendant are those specified in the schedule above referred to.

Wherefore the Defendants pray that the Plaintiff's action may be dis- missed and that judgment may be entered for the second and third Defendants declaring them the rightful Incumbents of the said Vihare according to their
20 respective rights and quieting the third Defendant in the possession thereof and of all the property belonging to it. The Defendants also pray for their costs and for such other relief as to the Court shall seem meet.

(Sgd.) GERALD de LIVERA, *Advocate.*
(Sgd.) C. VANDERWALL, *Proctor for Defendants.*

I consent to the answer being filed.

(Sgd.) J. B. SIEBEL, *Proctor for Plaintiff.*

List of Books.

30 1. Bhiksenitrathimokshasanna.

No. P6.

Replication in D. C. Kandy Case No. 81630.

IN THE DISTRICT COURT OF KANDY

PARUSALA DHAMMAJOTHI UNNANSE.....*Plaintiff.*

No. 81630. *vs.*

- 1. T. B. PARANATALA.
- 2. PILLEWELA DHARMADASA UNNANSE.
- 3. AMOONEGAMA RATANAPALA UNNANSE.....*Defendants.*

No. P 6.
Replication
in D.C.,
Kandy, Case
No. 81630
11-7-1879

Exhibits.
No. P 6.
Replication
in D. C.,
Kandy, Case
No. 81630
11-7-1879—
Continued.

On this 11th day of July, 1879.

The Replication of the Plaintiff abovenamed by John Boyle Siebel, his Proctor to the answer of the Defendants, showeth :—

1. That save the admissions in the said answer the Plaintiff denies the material allegations therein and joins issue with the Defendants thereon.
2. That the Grantees under the Deed of 1849 referred to having accepted the said Deed under the conditions set forth therein and having acted thereunder neither they nor the Defendants can now repudiate the said Deed on the provisions thereof, the same having moreover in accordance both with the terms of the Sannas in question and the Buddhistical Law succession. 10
3. That the late Paranatala Ratanapala Unnanse (No. 2) resided at the Degaldoruwa Vihare and officiated therein but the Plaintiff saith that he the Plaintiff, as the senior pupil of the grantor managed the affairs of the said temple and of its endowments as such and in his own right as one of the Incumbents thereof.
4. That the Plaintiff denies the right of the said Paranatala Unnanse to have made any disposition of the temple of its endowments or to convey to the prejudice of the Plaintiff, any of his so-called rights as Incumbents, to the third Defendant, and the Plaintiff says that the said will even, if genuine, does not in point of fact deal with temple property. 20
5. That the Deed alleged to have been executed by Paranatala Sumane Unnanse in favour of the said second and third Defendants is invalid and of no force or effect, in as much as by his disrobing himself in 1851 as alleged in the libel, he lost all his rights under the said Deed of the 7th May, 1849, and as one of the pupils of Paranatala Ratanapala Unnanse, Senior, the Grantor.

Wherefore the Plaintiff persisting in the truth of the statements in the libel contained and expressly denying that he is in possession of any of the Sacred Books or movable property to the said Vihare prays judgment as in and by his libel he hath already prayed.

(Sgd.) J. B. SIEBEL, 30
Proctor for Plaintiff.

(Sgd.) FRANCIS BEVEN,
Advocate.

I consent to this replication being filed.

(Sgd.) C. VANDERWALL.
Proctor for Defendant.

No. D10.
Deed No. 3060.

Exhibits.
No. D 10.
Deed No. 3060
12-9-1879

The Deed of Agreement caused to be written and granted at Kandy on this 12th day of September, 1879, purports to wit :—

The articles of agreement made and entered into by and between Parusala Dhammajothi Unnanse of Meda Pansala in Malwatte Vihare, Kandy, in the Central Province of the Island of Ceylon hereinafter referred to as the party of the first part and Deniyewattegedera Bodiya Waduwa of Walgowwagoda in Kandupalata of Yatinuwara hereinafter referred to as the party of the
10 second part.

I the said Parusala Dhammajothi Unnanse held and possessed by right of inheritance from my master Mahalle Sobitha Unnanse deceased free of dispute the following :—

All that land called Deniyewatta of two pelas paddy sowing in extent situate at Walgowwagoda in Kandupalata of Yatinuwara and bounded on the East by Udeweraluange Kumbura, on the South by the ditch of Indurugollehena, on the West by Parak-ange Ella and on the North by the ditch of Medikelehena and the ditch of Wellasse Hene, the land within these boundaries with everything standing thereon.

20 2. All that Eastern portion of about one pela in paddy sowing extent from and out of the field called Udaweraluange Kumbura of one amunam paddy sowing in extent situate as aforesaid and the entirety being bounded on the East by the Imaniyara Palle Weraluange, South by Indurugollehena-ella and the ditch, West by Deniyewatte and on the North by the ditch of Utuwangoda and Ella. That the said Bodiya Waduwa shall possess the aforesaid lands for ever by attending to the Rajakaria and obeying my orders as follows :—

30 1. That the said Bodiya Waduwa or his assigns shall give to the Meda Pansala Malwatte Vihare six hundred dried arecanuts and twenty-five dried coconuts every month on or before the 1st day of each and every month and proper receipts shall be obtained by me or my aforesaid.

2. In the event of the failure or neglect to deliver such coconut and arecanut for a term of six months by reason thereof that this agreement shall be cancelled and I or my heirs shall be entitled to the possession of the said premises and I or my heirs shall recover the said value of the said coconuts and arecanuts by action from the said Bodiya Waduwa or his aforesaid.

40 3. In the event of the said second party or his assigns shall not accordingly by delivering the said coconuts and arecanuts regularly as aforesaid I or my descendants shall not cancel this agreement and allow them to carry on the possession and in the event of any dispute arising I or my descendants shall warrant and defend the title and settle such dispute.

4. We further agree that the said Bodiya Waduwa or his aforesaid shall not mortgage or stand for security or sell or dispose of the aforesaid premises without my consent.

Exhibits.
No. D 10.
Deed No. 3060
12-9-1879 -
Continued.

5. And that the said first and second party, their heirs and descendants do hereby further covenant to observe and perform duly the foregoing conditions and caused this Deed of Agreement to be written and set our signatures to three of the same tenor and date as these presents and delivered the stamped copy unto the said Bodiya Waduwa to be kept.

Signed before us :
(Sgd.) DHAMMALASSI UNNANSE.
"RALA.
(Sgd.) A. D. PHILLIP, 10
Notary Public.

I Andradi Mudianselage Don Philippu Appuhamy, Notary Public of Kandy, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary to the said first and second party in the presence of the subscribing witnesses Walpala Dhammalassi Unnanse of Kulugammana in Kulugammanasiapattu of Sarasiapattu and Widalath Aratchillagegedera Punchirala Muhandiram rala of Pilawala set their signatures in my presence and in the presence of one another, all being present at the same time at No. 315, Trincomalie Street in Kandy and affixed stamps to the duplicate for the value of Rs. 10 and the original Re. 1 on this twelfth 20 day of September, 1879.

Date of Attestation :
12th September, 1879. SEAL.
(Sgd.) DON PHILLIP,
Notary Public.

No. P7.
Plaint in D. C. Kandy
Case No. 90099

No. P 7.
Plaint in D.C.,
Kandy, Case
No. 90099
27-1-1882

IN THE DISTRICT COURT OF KANDY

No. 90099.
PARUSALA DHAMMAJOTHI UNNANSE of Malwatte 30
Vihare in Kandy*Plaintiff.*

vs.

1. TIKIRI BANDA PARANATALA of Kandy.
2. PILEWALA DHAMMADASSE UNNANSE, and
3. AMUNUGAMA RATANAPALA UNNANSE, both of Degal-
doruwa Vihare in Lower Dumbara..... *Defendants.*

The 27th day of January, 1882.

The libel of the Plaintiff abovenamed by John Boyle Siebel, his Proctor, sheweth :

Exhibits.
No. P 7.
Plaint in D.C.
Kandy Case
No. 92099
27-1-1882—
Continued.

1. That in and by virtue of a Royal Sannas dated Sacca 1708 (A.D. 1786) Sri Rajadhi Rajasinghe, last King of Kandy, granted *inter alia*, the Degal-doruwa Vihare with the endowments thereof unto Moratota Nayake Unnanse and his pupils in generations for ever as will be seen on reference to the said Sannas a translation whereof is herewith produced marked "A" the Plaintiff undertaking to produce the original on the day of trial.
- 10 2. That in virtue of the said Sannas the said Moratota Nayake Unnanse entered into the possession of the said Vihare and its endowments and possessed the same until his death when he was succeeded by his pupils Dunumale Seelawanse, Sonuttara Unnanse and Mahalle Sobitha Unnanse.
3. That after the death of the said Dunumale Seelawanse Unnanse and Sonuttara Unnanse, the said Mahalle Sobitha Unnanse became his sole Incumbent and alone possessed the said Vihare and its endowments as the only surviving pupil of the said Moratota Nayake Unnanse.
- 20 4. That in the year 1844, the said Mahalle Sobitha Unnanse then in the possession of the said Vihare and its endowments disrobed himself and took office under the British Government as Ratamahatmaya of Upper Hewahetta and that at the time of such disrobing he had three pupils, *viz.* : (1) Paranatala Ratanapala Unnanse No. 1, (2) Dunumale Unnanse (who died about fifteen years ago), and (3) Parusala Dhammajothi Unnanse (the Plaintiff) who then became entitled as such pupils to the said Vihare and its endowments in terms of the said Sannas and who then duly entered upon and became possessed of the same.
- 30 5. That at the time the said Mahalle Sobitha Unnanse disrobed himself the Plaintiff was a Samanera (a priest of the first order) and very young and being of under years the said Mahalle Sobitha Unnanse placed the Plaintiff in charge of his said senior pupil Paranatala Ratanapala Unnanse No. 1 and requested him to educate and instruct him in the rites and doctrines of the Buddhist religion.
- 40 6. That the said Paranatala Ratanapala Unnanse undertook the task and duly educated and instructed the Plaintiff (who was then in joint possession of the said Vihare with him) and treated him the Plaintiff throughout as a pupil of his own, and moreover just before he disrobed himself and took office under the British Government, *viz.*, on the seventh day of May, 1849, by his Deed bearing that date (a copy whereof is herewith filed marked "B" undertaking to produce the original on the day of trial) confirmed the Plaintiff in the succession to the incumbency of the said Vihare and conveyed the said temple and its endowments to the Plaintiff and three others his pupils, *viz.*, Sirimalwatte Sumangala Unnanse, Paranatala Ratanapala (Junior) and Paranatala Sumana Unnanse to be held and possessed by them in manner stated in the said Deed.

Exhibits.
No. P 7.
Plaint in D.C.,
Kandy, Case
No. 90099
27-1-1882—
Continued.

7. That the Plaintiff fully believing that he was the pupil according to the Buddhist religion of the said Paranatala Ratanapala Unnanse as well as of the said Mahalle Sobitha Unnanse and that the former had power to execute the said Deed in his favour continued in the joint possession of the said temple and its endowments with his co-grantees until they died, or disrobed themselves, and thereafter in sole possession of the same until he was dispossessed thereof by the Defendant in 1877 as hereinafter alleged when he claimed the said temple and its endowments in the District Court of Kandy, Case No. 81630, as pupil of the said Paranatala Ratanapala Unnanse in virtue of the said Deed of seventh May, 1849, granted to him as aforesaid and recovered judgment therein, but the Hon'ble the Supreme Court having dismissed the Plaintiff's claim on the ground that the Plaintiff was not according to the Buddhist religion a pupil of the said Paranatala Ratanapala Unnanse, Senior, the Plaintiff says that his right as the sole surviving pupil of the said Mahalle Sobitha Unnanse remain intact and that he is entitled to the said Vihare and its endowments as such pupil in terms of the said Sannas. 10

Now the Plaintiff complaining saith that the second Defendant above-named took wrongful possession of the said temple in the year 1877 and is together with the 1st Defendant in the occupation of the Pansala and refuses to give up possession thereof and of the temple and its endowments to the Plaintiff alleging that he holds the same under the order of the 1st Defendant for and on behalf of the Defendants, and that 1st Defendant although often requested hath refused to name his title thereto or to give up possession of the said temple and its endowments and the property therein and the Plaintiff saith that the said Defendants have moreover by their agents and servants taken the produce and profits of the endowments of the said temple to their own use since the year 1877 to the great loss and damage of the Plaintiff. 20

Wherefore the Plaintiff prays that he may be declared entitled to and put and placed in possession of the said temple as its Incumbent and of the endowments thereof and of the property belonging thereto (mentioned and set forth in the Schedule " C " hereto annexed all being of the value of Forty Thousand Rupees) and that the said Defendants should be decreed to give up possession of the same to the Plaintiff and jointly and severally adjudged to pay to Plaintiff the sum of Five Thousand Rupees yearly as and for damages and mesne profits from August, 1877, until possession of the said temple and of its endowments and of the property therein is delivered to the Plaintiff and prays for his costs in this behalf incurred and for such further relief as to this Court shall seem meet. 30

(Sgd.) FRANCIS BEVEN,
Advocate.

(Sgd.) J. B. SIEBEL,
Proctor for Plaintiff. 40

No. P8.
Answer in D. C. Kandy.
Case No. 90099.

Exhibits.
No. P 8.
Answer in D.C.,
Kandy, Case
No. 90099
24-3-1884

IN THE DISTRICT COURT OF KANDY.

PARUSALA DHAMMAJOTHI UNNANSE.....*Plaintiff.*
No. 90099. *vs.*

1. TIKIRI BANDA PARANATALA
2. PALAWELA DHAMMADASSI UNNANSE
3. AMUNUGAMA RATANAPALA UNNANSE.....*Defendants.*

10 On this 24th day of March, A.D. 1884.

The answers of the Defendants by Charles Vanderwall, their Proctor to the libel of the Plaintiff, sheweth :—

1. That before this suit the Plaintiff brought an action against the Defendants in suit No. 81630 of this Court for the same cause of action as in the said libel mentioned and such proceedings were thereupon had in that action that afterwards and before this suit it was considered by the judgment pronounced in the said action by the Supreme Court that the Plaintiff's claim be dismissed and the said judgment which the Defendants plead as an estoppel to the maintenance of this action still remains in force.

20 2. That the Defendants are not guilty of the trespass complained of by the Plaintiff.

3. That the Defendants admit that the Degaldoruwa Vihare and its endowments were granted by Sri Rajadhi Rajasinghe (a late King of Kandy) to Moratota Mahanayake Unnanse upon the Sannas pleaded in the first paragraph of the libel and that he entered into the possession of the said Vihare and its endowments and continued in possession of the same until his death and the Defendants say that upon the death of the said Moratota Mahanayake Unnanse, he succeeded in the incumbency of the temple by his pupil Dunumale Seelawansa Unnanse and on the death Dunumale Seelawansa
30 Unnanse he was succeeded by his pupil Paranatala Ratanapala alias Balaharuwe Sonuttara Unnanse each of whom held and possessed the said temple and its endowments solely and exclusively.

4. The Defendants deny it to be true that Mahalle Unnanse was a pupil of the said Moratota Mahanayake Unnanse or that he the said Mahalle Unnanse became the sole Incumbent and alone possessed the said Vihare and its endowments as alleged.

5. The Defendants admit that Mahalle Unnanse disrobed himself in 1844 but deny that Paranatala Ratanapala Unnanse was a pupil of the said Mahalle Unnanse and that as such pupil he became entitled to the said Vihare
40 and its endowments and held and possessed the same as alleged. On the

Exhibits.
No. P. 8.
Answer in D.C.
Kandy, Case
No. 90099
24-3-1884—
Continued.

contrary the Defendants say that upon the death of the said Sonuttara Unnanse, Ratanapala Unnanse who was the pupil of the said Sonuttara Unnanse (and not of Mahalle as alleged by the Plaintiff) succeeded as such pupil to the incumbency of the said temple and held the same.

6. The Defendants admitting that Dunumale Seelawansa Unnanse and the Plaintiff were pupils of Mahalle Unnanse deny it to be true that the said Dunumale Seelawansa Unnanse or the Plaintiff succeeded to the said temple and its endowments, or that either of them entered upon and possessed the same in virtue of any such right as alleged or that they were joint Incumbents of the said temple with Paranatala Ratanapala Unnanse. 10

7. The Defendants admit that Paranatala Ratanapala executed the Deed of 7th May, 1849, referred to in the 6th paragraph of the libel but they deny that by the said Deed Ratanapala Unnanse confirmed the Plaintiff in the succession to the incumbency of the said Vihare and its endowments or that he had a right to do so, convey any part of the said Vihare and its endowments to the Plaintiff. And the Defendants further say that the said Deed in so far as it purports to vest the incumbency in the survivor the grantees to the exclusion of the pupils of a deceased pupil is invalid as contravening the Sannas by which the said Vihare was founded. And the Defendants further say that the Plaintiff waived no right to the said temple 20 by virtue of the said Deed or did he possess the said temple and its endowments as alleged in the libel.

8. That in the year 1849 the said Paranatala Ratanapala Unnanse disrobed himself and thereupon the said temple and its endowments descended to and were held and possessed jointly by his pupils Paranatala Ratanapala Unnanse (Junior) and Paranatala Sumana Unnanse.

9. That Paranatala Ratanapala Unnanse (Junior) who was the Chief Incumbent and Manager of the said temple and its endowments died in the year 1877 after appointing his only pupil, the 3rd Defendant as the successor in the office of Chief Incumbent and Manager of the said temple and that 30 thereafter the 3rd Defendant who was a minor held and possessed the said temple and its endowments jointly with the said Paranatala Sumana Unnanse.

10. That by the death of the said Paranatala Sumana Unnanse in the year 1878, the 3rd Defendant has become entitled to the exclusive possession and enjoyment in trust for his pupils of the said temple and its endowments.

11. The said temple and its endowments were possessed uninterruptedly by the 3rd Defendant and his predecessors in title for a period of 10 years and upwards prior to any claim made thereto by the Plaintiff by a title adverse to and independent of the Plaintiff and of Mahalle Unnanse, from whom he derives title in terms of 3rd section of Ordinance No. 22 of 1871 which 40 possession the Defendant plead in bar of the Plaintiff's claim.

12. The 1st and 2nd Defendants disclaims title to the said temple and its endowments and say and as the near relatives and friends of the 3rd Defendant, they assisted him during his minority in the management of the secular affairs of the said temple.

Exhibits.
No. P 8.
Answer in D.C.,
Kandy, Case
No. 90099
24-3-1884—
Continued.

13. The Defendants further say that this action in so far as it is a claim for mesne profits is not maintainable in that this action was not commenced within three years from the time when the cause of action is alleged to have arisen, are in so far as it is a claim for damages this action is maintainable as the same was not commenced within two years from the time when the cause of action is alleged to have arisen and herein the Defendants plead the 8 and 10 clauses of the Ordinance No. 22 of 1871.

Wherefore the Defendants pray that the Plaintiff's action may be dismissed with costs and that the 3rd Defendant may by a judgment of this Court be quieted in the possession of the said temple and its endowments as the rightful Incumbent thereof. The Defendants also pray for their costs and for such other relief as to the Court shall seem meet.

(Sgd.) EARNEST COOK, Advocate.
(Sgd.) C. VANDERWALL, Proctor for Defendants.

20

No. P9.

Replication in District Court, Kandy, Case No: 90099.

No. P 9.
Replication in
D.C., Kandy,
Case No. 90099
10-9-1884

IN THE DISTRICT COURT OF KANDY.

PARUSALA DHAMMAJOTHI UNNANSE of Malwatte Vihare

in KandyPlaintiff.

No. 90099. vs.

- 1. TIKIRI BANDA PARANATALA of Kandy.
2. ELAWALA DHAMMADASSI UNNANSE.
3. AMUNUGAMA RATANAPALA UNNANSE, both of Degal-doruwa Vihare in Lower Dumbara.....Defendants.

30 On this the 10th day of September, 1884.

The Replication of the Plaintiff abovenamed by John Boyle Siebel, his Proctor to the answer of the Defendants, sheweth :—

- 1. That admitting the institution by the Plaintiff of the Suit No. 81630 of this Court against the Defendants saith that the judgment of the Supreme Court in the said case is no bar to the maintenance of the present action.
2. That save so much of the said answer as admits the truth of the allegations in the Plaintiff's libel; he the Plaintiff denies the other allegations in the said answer and joins issue with the Defendants upon the same.

Exhibits.
No. P 9.
Replication in
D.C., Kandy,
Case No. 90099
10-9-1884—
Continued.

3. That it is not true that either the 3rd Defendant or his alleged predecessors in title had exclusive possession of the Vihare in question or its endowments on the contrary the Plaintiff saith that whilst the late Paranatala Ratanapala Unnanse (No. 2) was the officiating priest of the said temple, he, the Plaintiff, succeeded to the incumbency of the said temple as stated in the 6th and 7th paragraphs of the libel and managed the affairs thereof and its endowments as the Senior Incumbent of the said temple until the ouster complained of as he is ready to verify.

Wherefore Plaintiff prays judgment as in by his said libel he hath already prayed.

(Sgd.) J. B. SIEBEL,
Proctor for Plaintiff.

(Sgd.) N. E. COOK,

for Mr. ADVOCATE EATON.

10

No. P 10.
Judgment in
D.C., Kandy,
Case No. 90099
12-8-1885

No. P10.

Judgment in District Court, Kandy, Case No. 90099.

Judgment.

12th August, 1885.

This is an action brought by the Plaintiff for a declaration that he has a right to the incumbency of the Degaldoruwa Vihare and to be quieted in the possession and enjoyment thereof and of the endowments and privileges thereto belonging and the Plaintiff prays that the Defendants may be decreed to give up possession of the said Vihare to the Plaintiff and for mesne profits. 20

It will be convenient to set out the history of the Vihare so far as it is disclosed in the pleadings showing how far the parties agree and wherein they defer.

The Vihare was endowed by one of the Kings of Kandy Sri Rajadhi Rajasinha in 1708 Sacca A.D. 1786. The grant made to Moratota Dhammakanda Mahanayake Unnanse in Sisyanu Sisya Paramparawa tenure, that is to say, to the original grantee and his sacerdotal pupils in their generations. That his pupil Dunumale Seelawansa Unnanse succeeded to the said grantee. 30

The Plaintiff maintains that after the death of Dunumale Seelawansa Unnanse, two other persons, co-pupils with the last named Unnanse successively succeeded to the incumbency of the Vihare, that is to say, Sonuttara Unnanse and Mahalle Sobitha Unnanse. The Defendants, on the other hand, say that Dunumale Seelawansa Unnanse was succeeded by his pupils Paranatala Ratanapala otherwise called Balaharuwe Sonuttara Unnanse and deny that

Sonuttara Unnanse and Mahalle Sobitha Unnanse were pupils of the original grantee. The Plaintiff further says that the said Mahalle Sbitha Unnanse on the death of his abovenamed two co-pupils became the sole Incumbent.

Exhibits.
No. P 10.
Judgment in
D.C., Kandy,
Case No. 90099
12-8-1885—
Continued.

This is denied by the Defendants hence one issue is whether Mahalle Sobhitha Unnanse was sacerdotal pupils of Moratota Mahanayke Unnanse.

The Plaintiffs further alleges that the said Mahalle Sobitha Unnanse in 1844 being in the possession of the said Vihare, disrobed himself and that at the time he had three pupils:

1. PARANATALA RATANAPALA (Senior).
2. DUNUMALE (Junior) and
3. THE PLAINTIFF who then became entitled as such pupils to the said Vihare and its endowments and entered into possession of the same.

The Defendants admit that Mahalle Sobitha Unnanse disrobed himself in 1844 but they deny that Ratanapala (Senior) was his sacerdotal pupil or that the three persons abovenamed entered into possession of the Vihare in 1844.

Hence another issue is whether Ratanapala (Senior) was the sacerdotal pupil of Mahalle.

- 20 The Defendants alleged in terms of Deed No. 11006 of May, 1849 B (upon which Plaintiff based his title in Case No. 81630 of this Court) that the original grantee made over the Vihare to Dunumale Seclawansa Samanera, his son by pupillage and to Paranatala Anunayake Samanera, his elder brother's son and pupil and relation and thereafter these two priests having held and possessed the said Vihare made it over to Paranatala alias Balaharuwe Sonuttara Unnanse, their pupil upon the Thalpath bearing the year of Sacca 1735 (A.D. 1813 marked X) who on his death bed had made over the same to Paranatala Ratanapala Unnanse, Senior, his younger brother's son and pupil upon the Thalpath bearing the date the year of Sacca 1746 (A.D. 1824, marked
- 30 W) and that the said Paranatala, Senior, was in sole and undisturbed possession of the Vihare for twenty-five years, that is to say 18—1849.

The Plaintiff states that in 1849, Ratanapala, Senior, executed the Deed dated 7th May, 1849 (B) and then disrobed himself, the Defendants admit this. But the Plaintiff and the Defendants do not agree as to the effect of Deed B the Plaintiff maintains that it is a Deed confirming him in the right he had to the Vihare before and independent of its execution.

The Defendants, on the other hand, say that it is a Deed of gift which has been held by the Supreme Court to confer no right on the Plaintiff to the incumbency of the Vihare.

- 40 The Plaintiff maintains that after Ratanapala, Senior, threw off his robes that those named in the Deed B, that is to say, 1. Balaharuwe alias Paranatala Sumana Unnanse (my relation and pupil), 2. Balaharuwe alias Paranatala

Exhibits.
No. P 10.
Judgment in
D.C., Kandy,
Case No. 90099
12-8-1885—
Continued.

Ratanapala Samanera Unnanse, called in this judgment Ratanapala, Senior, 3. Parusala Samanera Unnanse (the Plaintiff), 4. Sirimalwatte Suman-gala Unnanse entered into possession and jointly possessed the Vihare and that since the death of his co-grantee, the Plaintiff is entered to the same as the sole surviving pupil of Mahalle and that in 1877 he was dispossessed by the Defendants. In the replication, the Plaintiff says that he was the Incumbent of the temple, the said Ratanapala, Junior, being only the officiating priest.

The Defendants, on the other hand, maintain that after Ratanapala, Senior, became a layman that his pupil Ratanapala, Junior, and Paranatala Sumana succeeded him, as that at the time of Ratanapala Junior's death in 1877, he 10 by will appointed the 3rd Defendant, his pupil as his successor, that Sumana died in 1878, and that then the 3rd Defendant became entitled to the exclusive possession and enjoyment in trust for his pupils of the said temple and endowments. The 1st and 2nd Defendants disclaiming all title in themselves, say that as the near friends and relatives of the 3rd Defendant they assisted him during his minority in the management of the secular affairs of the said Vihare.

The Defendants further plead that the said Vihare and its endowments were possessed uninterruptedly by the 3rd Defendant and his predecessors in title for more than ten years before action brought, hence that he the 20 3rd Defendant has acquired a title by prescriptive possession.

Before dealing with the evidence adduced both documentary and oral I may state that I hold that the statement made by the 2nd Defendant do not bind the 3rd Defendant, 2nd Defendant says that he does not claim the Vihare and on his examination at the present trial he says that he heard certain things indeed he could not have known them as he was not born qualifying his statement at the former trial if the Plaintiff wishes to make the statements of the 2nd Defendant, evidence against the 3rd Defendants, he and the 2nd Defendant should have been called as a witness. Further, although the Defendants have joined in one answer yet the 2nd Defendant has been acting 30 as the guardian of the 3rd Defendant and in this view his admissions could not bind the 3rd Defendant.

It will now be as well here to refer to Case No. 81630 in which the Plaintiff and Defendants were the same, the object sought to be obtained the same as in this suit. The Degaldoruwa Vihare and the alleged causes of action identical on ouster in 1877 the right under which the Plaintiff now claims not been however precisely similar in fact opposed to those rights.

In this case the Plaintiff claims as the pupil of Mahalle Sobitha Unnanse whereas in the former case he claimed as the pupil of Ratanapala, Senior, under the Deed of May, 1849, marked B. In the former case the Plaintiff 40 claimed under the said Deed B and two Ola Deeds X and W dated respectively 1813 and 1824 which he formerly put in evidence.

What are the facts set out in these Deeds? That the temple called "Degaldoruwa Vihare" having been endowed by Rajadhi Rajasinha was granted by him to Moratota Dhammakanda Mahanayake Samy and his sacerdotal pupils in this generation. That the said Moratota granted the same to two of the pupils Dunumale Seelawansa Unnanse and Paranatala Anunayake Unnanse.

Exhibitis.
No. P 10.
Judgment in
D.C., Kandy,
Case No. 90099
12-8-1885—
Continued.

This grant according to the law laid down per Caley, C. J., in D.C. Kurunegala No. 19413 (Grenier's reports for 1874, page 70). He there says: "It has always been the accepted rule of law in the Court that whenever a gift was made by a Sannas or otherwise of lands for the purpose of future priestly succession by Sisy Paramparawa the original proprietor priests might indicate the person through whom the line of succession was to pass but that thereafter the succession was always to continue there in strictly limited to the pupils of each successive Incumbent.

Dunumale Seelawansa Unnanse and Paranatala Anunayake Unnanse by Thalpath X of 1813 granted the same to other pupils Balaharuwe Sonuttara Samanera Unnanse who by Thalpath W of 1824 granted the same to Ratanapala, Senior, stated in Deed C of May, 1849, to have been his pupil Ratanapala, Senior, executed Deed of 7th May, 1849 B, under which the Plaintiff then claimed. True in the present case that Deed was put in evidence not by the Plaintiff but by the Defendants, but as an action No. 81630 was directly founded on Deed B and to enforce the rights supposed to have been conferred by Deeds B, X and W, the Plaintiff cannot now be allowed to dispute the correctness of the contents or the effects of these Deeds for the matters set out and recited formed the Plaintiff's monuments of title in the former Case No. 81630 in which the Supreme Court dismissed the Plaintiff's claim, because, he not having been robbed by Ratanapala, Senior, could not succeed to the said Vihare under Sisy Paramparawa had I been trying the former case, I might have had some doubt as to whether the Vihare is now held under that tenure as I find the following recited in W dated 1824, King Sri Wickrema "having caused the death of Paranatala Anunayake Samy unjustly gave over the said Degaldoruwa Vihare as Crown property to Amunugama Unnanse, but after the establishment of "English authority" instituted legal proceedings and recovered possession of the said Vihare by the course of law and undisturbedly possessed and enjoyed the same for a period of 11 years but that plea even if valid is not now open to the Plaintiff in view of the judgment of the Supreme Court in the lost case which has laid down the tenure by which the Vihare is held to be Sisy Paramparawa. That Mahalle probably knew that he had no claim to the Vihare is, I think, evidenced by his having signed Thalpath W as a witness. Plaintiff now denies the signature to be that of his tutor Mahalle but it has been proved that there was but one Mahalle Unnanse at Malwatte and that he was the only priest who signed his name in English characters and were the signature not that of Mahalle the Plaintiff would probably have produced other signatures for comparison it must further be remembered that the ancient Deed W coming from the custody of the Plaintiff and forming one of his monuments of title prove itself but even were Mahalle Sobitha not

Exhibits
No. P 10.
Judgment in
D.C., Kandy,
Case No. 90099
12-8-1885—
Continued.

a witness to the Deed W, if the Deed clearly shows who were the various Incumbents of the said Vihare—facts relied upon by the Plaintiff at the last trial and which can hardly be allowed to dispute now. As regards the first issue whether Mahalle was pupil of the original grantee Moratota Dhammakanda Mahanayake Unnanse. It must be remembered that there is a great distinction between sacerdotal pupils who have been robed by their tutors and those who have merely been pupils for education and instruction as it is the robing which constitute pupillage who have been robed by their tutors and those who have merely been pupils for education and instruction, as it is the robing which constitutes pupillage for the purpose of succession to a tutor's incumbency 10 and not mere instructions, pupils who have been merely thought by an Incumbent would not succeed under *Sisyannu Sisyā Paramparawa*.

In considering this part of the case I must exclude the evidence of the Plaintiff who admits that he knew nothing about Mahalle pupillage except by hearsay. What evidence then has the Plaintiff adduced to establish such a pupillage of Mahalle as would entitle him to succeed to the original grantee? I fail to find any.

Plaintiff's counsel wished to put in an extract too from the Revenue Commissioner's Office, Kandy, to show that one Mahalle Sobitha Unnanse described himself as the pupil of Moratota Nayake Unnanse—documents pur- 20 port to be the register of certain lands not including the land now in dispute Defendants counsel objected to its acceptance as not being evidence to establish the pupillage of Mahalle as I concurred in the view I rejected it, but had it been admissible it would not have established the essential fact desired *that Mahalle Unnanse had been robed by Moratota Unnanse*.

The next issue is whether Ratanapala, Senior, was such a pupil of Mahalle Unnanse as to entitle him to succeed to his tutor's incumbency.

It was proposed to put in various statements of Ratanapala, Senior, in cases to which the Defendants were no parties and in which the title to this Vihare was not in dispute and long after the said Ratanapala, Senior, ceased to be 30 a priest. Defendants' counsel objected to the preception of these cases in evidence to prove that Ratanapala, Senior, had been the sacerdotal pupil of Mahalle. I rejected them though even they had been admitted. They would not have proved that he was such a pupil as would have entitled him to succeed to Mahalle's incumbencies indeed that such was the case is negatived by the recital in the admitted Deed B in which the said Ratanapala, Senior, says that he was the youngest brother's son and pupil of Balaharuwe Sonuttara Unnanse, and the same fact is again recited in Deed C of 7th May, 1849, filed 7271 D.C. Ratnapura a Deed put in by Plaintiff's counsel, to its reception Defendants' counsel objected except for the purpose of identifying the signature 40 of Mahalle but I considered that the Deed if admitted at all should be admitted *in toto*. I therefore allowed it to be put in evidence but on reference to that Deed I could not find the signature of Mahalle, but I did find that the Deed set out that Balaharuwe Sonuttara Unnanse was Ratanapala Senior's first tutor. That is to say, the one who robed him and that Mahalle was his second.

It will be as well to examine the oral testimony on the part of the case, that is as regards the pupillage of Ratanapala, Senior, consisting of two priests one "Rekawa" Unnanse was called to prove that Mahalle robed Ratanapala, Senior, and thereafter Damunupale Ratanapala Unnanse to prove that Mahalle presented him for ordination, both these men gave me the impression that they had come to vouch for the truth of the Plaintiff's story rather than to state what they had seen. They neither of them professed to know anything about persons they must have known if the evidence they gave was the result of personal knowledge. Further the evidence Rekawa is contradicted by the

10 Deeds produced.

Exhibits.
No. P 10.
Judgment in
D. C., Kandy,
Case No. 50099
12-8-1885—
Continued.

Thus the Plaintiff's action must be dismissed.

In this view perhaps it is not necessary that I should comment upon the evidence of the Plaintiff still it is, I think, better to deal with the whole case.

The Plaintiff's story is that he was ordained in 1856 at that time being 20 years of age, the earliest age at which a priest can be ordained (Upasampada) hence when Ratanapala, Senior, threw off his robes in 1849, he the Plaintiff could only have been thirteen years of age and yet he wishes the Court to believe that he became sole Incumbent of the Vihare notwithstanding the terms

20 of the Deed B under which he claimed in the last case and the provisions therein that the Plaintiff and Sumana shall obey the orders of one of the co-grantees Sirimalwatte Sumangala, yet the Plaintiff now alleges that he was the sole Incumbent of the Vihare from 1849.

In the last case the Plaintiff gave a version not quite same as these but there he had to establish a different state of facts not that he was entitled to the Vihare independently of Ratanapala, Senior, and to the exclusion of Ratanapala, Junior, and Sumana under whom the 3rd Defendant claimed, has as the sole survivor of the grantees under Deed B he says in that case, after the execution of Deed 1849 Ratanapala disrobed himself, I was then a Sama-

30 nera as each of us was ordained, we did not take charge of the Vihare, but each resided in one. I presided in Malwatte, Ratanapala in Degaldoruwa. Again he says, since the Deed only Sirimalwatte Sumangala and myself managed the temple affairs. Again in Case No. 56105 of this Court, the Plaintiff admitted that the 3rd Defendant's tutor who died in 1877 resided at the Vihare from 1849 to the time of his death, but the Court has not now to consider the rights of the parties under B, but whether the Plaintiff as the sacerdotal pupil of Mahalle has any right to the Vihare. Defendant's counsel further maintained that the original Proprietor Priest having according to the Plaintiff's own Deed B, X and W transferred his rights to the Vihare to two

40 of his pupils, other than Mahalle, that Mahalle was thereafter excluded whatever his original rights may have been Plaintiff's counsel urges that the original priest could not pass by his pupil Mahalle. I, on the authority of Cases Nos. 366, Agents' Court at Kurunegalle, Vanderstraaten's report Appendix D put in by Plaintiff's counsel hold that he could if it were open to me to question that point. The lands, Vihare, etc., belonging to Bhikkhus

Exhibits.
No. P 10.
Judgment in
D.C. Kandy
Case No. 90099
12-8-1885—
Continued.

or (Upasampada Priests) vest although he had (so many as) five pupils devolve solely to that pupil to whom an absolute gift was made thereof and that pupil alone of the said donees will afterwards succeed thereto who received a regular gift of the same from him.

That as to the pleas of *res-judicata* different tests have been applied for the purpose of ascertaining whether the judgment entered in one action is a bar to a subsequent action. One test is given by the collective Court in Case C. R. Matara Nos. 36998, 3 Supreme Court Circular, page 13, per Berwick Justice, the only true test is whether a definite decision has been given on a suitor's right to what he claimed in a former case. For obviously the claim may as well be *res-judicata*, when the right has been tried on the issue of law alone as when it has been tried on an issue of fact requiring proof. Another test is are the facts in issue really the same? Again in order that judgment should bind parties it must have directly decided the point which is in issue in the second suit. *Moss vs. Anglo-Egyptian Navigation Company*, 35 R. T. CH 179 S.C. 10

One great question whether the causes of action and issues are identical any two cases is that the same evidence will maintain both actions. But it is evident as pointed out by Lord Justice Bowen in *Bronslaw vs. Humphry* 4 R14 QB 148 that the application of the rule depends not upon the technical consideration of the identity of form of action, but upon matters of substance. 20

It has also been held that a judgment is not only conclusive with reference to the actual matter decided but also with reference to the grounds of the decision provided that the grounds of the decision can be clearly described from the judgment itself (*Bank of Hindostaan China and Japan re Alision* Case 43, L. I. Chl.). In Case No. 81630 the Plaintiff set out title as flowing to himself from the original proprietor priest through certain channels in support of that contention admitted up to a certain point by the Defendants, that is to say, up to the execution of the Deed of 7th May, 1849 B, the Plaintiff produced certain Thalpath X of 1813, by which he sought to establish that Moratota Unnanse had granted the Vihare along with the Sannas to his two pupils Dunumale Seelawansa Unnanse and Paranatala Anunayake Unnanse, who alleged that having possessed and enjoyed the same in common for a several number of years granted the Vihare and Sannas to Balaharuwe Sonuttara Samanera Unnanse the good prudent and obedient pupil of us both and Plaintiff also produced Thalpath W of 1824 by which the said last named priest granted the said Vihare to Ratanapala, Senior, who by Deed B dated 7th May, 1849, made the grant under which the Plaintiff then claimed these facts were in reality found by the Court; these are the words of that finding. The Vihare in question with the other Vihares were granted by a Sannas of the King of Kandy to Moratota Mahanayake Unnanse and "his pupils several generations of pupils has possession and charge of the incumbency from the grantee until it devolved on Ratanapala Unnanse." He on the 7th May, 1849 (Deed B), just before he disrobed himself left this Vihare and others to his four pupils of whom Ratanapala, Junior, 3rd Defendant's tutor was one and Plaintiff another. 30

These facts have in reality been affirmed by the Supreme Court with the sole exception of the pupillage of the Plaintiff. Hence it is not in this suit open to the Plaintiff to seek by another judgment of the Court to set aside all the findings in fact being in substance that the Vihare descended to Ratanapala, Senior, under the well-known tenure Sisyanu Sisya Paramparawa and from him to the 3rd Defendant through his tutor Ratanapala, Junior, thus excluding Mahalle altogether from the line of succession and consequently the Plaintiff who claims through and under him.

Exhibits.
No. P 10.
Judgment in
D. C., Kandy,
Case No. 9009,
12-8-1885
Continued.

The Defendants' counsel further referred to No. 79219 of this Court as an authority to show that a Plaintiff should in a suit bring forward all the evidence whether his knowledge in support of his claim for should he fail in his first suit through want of evidence and a judgment be virtually entered for the Defendant he cannot bring a second suit to obtain relief identical with that sought in the first case.

The Plaintiff's counsel urged upon the authority of Richard *vs.* Gladstone 31 L. JCL 142 that the previous knowledge or otherwise of facts brought forward at the first trial was not a criterion, I have not been able to pursue that case, so I am unable to express an opinion upon its bearing on this case but there is a later case from the House of Lords referred to by Defendants' counsel which deals with that fact very fully Phosphate Sewage Company *vs.* Malleram 4 Appeals Case 801 "Lord Carus says:" that the only way in which a new fact leading up to the same relief asked for before could be admitted would be if the litigant were prepared to say I will show you that there is fact which entirely changes the aspect of the case and I will show you further that it was not and could not by reasonable diligence have been ascertained by me before "Lord Gordson" the same judgment gives two grounds upon which the plea of *res-judicata* may be met.

This is that where there is *res-noviter veniens or novebitum* which is nearly equivalent to saying that you were taken by surprise and have since discovered material evidence.

Secondly, where there is a fresh *medeum Careooneludedi* that is a fresh prayer in the libel different relief asked for neither of the grounds can avail the present Plaintiff he knew that he was Mahalle's pupil in the last case and the prayer for relief is in substance the same, though his right of action is based in reality upon the assumption that the findings of facts in 81630 as to the line of succession to the incumbency of the Vihare since the death the original grantees were erroneous otherwise clearly he could have no right of action.

It was contended for the Plaintiff that a person might claim an inheritance from his father upon a Deed and if defeated in that suit then by inheritance the cases are not analogous, there the right would devolve upon the claimant in any case and the mere fact that the Deed be set aside would not deprive him of his right by inheritance but not so here for the Plaintiff not being Ratanapala Senior's sacerdotal pupil, he has no right to the incumbency of the Vihare either by Deed B or otherwise.

Exhibits.
No. P 10.
Judgment in
D.C., Kandy,
Case No. 90099
12-8-1885—
Continued.

It is therefore declared that the Plaintiff has no right of action and that this action be dismissed with costs.

It is further declared as held by the Supreme Court in the last case that the 3rd Defendant is in the regular line of succession of the Degaldoruwa Vihare and that he be quieted in possession of the said Vihare and its endowments as the rightful Incumbent thereof.

(Sgd.) C. HAY,
District Judge.

No. P 11.
Decree of the
Supreme Court
in respect of
D.C., Kandy,
Case No. 90099
25-12-1886

No. P11.

Decree of the Supreme Court in respect of District Court, Kandy, 10
Case No. 90099.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

PARUSALA DHAMMAJOTHI UNNANSE.....*Plaintiff-Appellant.*

against

1. TIKIRI BANDA PARANATALA.
2. PILAWELA DHAMMADASSI UNNANSE.
3. AMUNUGAMA RATANAPALA UNNANSE.. *Defendants-Respondents.*

District Court of Kandy

Action No. 90099.

This cause coming on for hearing and determination on the 21st day of 20
December, 1886, and on the day upon an appeal preferred by Plaintiff before
Hon. Bruce Lokhare Burnside, Kt., Chief Justice and Hon. Lovell Bruchett
Clarence and Hon. Henry Dias, Justices of this Court in the presence of counsel
for the Appellant and Respondents.

It is ordered and decreed that this decree made in this action by the
District Court of Kandy and dated 12th day of August, 1885, be and the same
is hereby affirmed.

Witness the Hon. Sir Bruce Lokhare Burnside, Kt., Chief Justice, at
Colombo the twenty-fifth day of January the year of our Lord One Thousand
Eight Hundred and Eighty-seven and of our Reign the Fiftieth. 30

(Sgd.) WAITES,
Registrar, S.C.

No. D11.
Deed No. 5774.

Exhibits.
No. D 11.
Deed No. 5774
22-5-1882

Power of Attorney.

Know all men by these presents that I the undersigned Parusala Dhammajothi Terunnanse of Meda Panasla in Malwatte Vihare in Kandy, Central Province, of the Island of Ceylon do hereby appoint Edandawawe Saranankara Unnanse of Selawa in Tumpalata Pattu of Paranakuru Korale in Four Korles as my attorney and I do hereby allow him to possess and enjoy all the benefits and produce belonging to Selawa Vihare, *i.e.*, the high and lowlands, houses and plantations and other things belonging to the said Selawa Vihare but he shall take care of the said Vihare by improving the same. He shall obtain from the person or persons who possess the lands belonging to the said Vihare, the Rajakariya to the said Vihare which I possess free of dispute generation to generation from my masters.

And I do hereby decree that the said Edanduwawe Saranankara Unnanse shall attend to all the necessary religious rites to the said Vihare by improving the same, he shall recover the monies due for the last two years for Rajakariya from the people who possess the lands.

He shall attend to all the necessary works according to the customs.

In the event of the failure or neglect to attend to any work by any person as aforesaid he shall recover the same by action, he shall deliver monthly and Satara Mangalya to Meda Panasla in Malwatte Vihare, the religious rites according to the customs.

In the event of any dispute arising in respect of the lands belonging to the said Vihare he shall warrant and defend the title and settle such disputes and attend to Courts on my behalf. He shall sign proxies and retain proctors and advocates. If he lose any action he shall appeal and act according to law.

That the said Edanduwawe Saranankara Unnanse shall enter all the accounts in books and improve the said Selawa Vihare and shall use and enjoy the produce and profits of the lands, he shall deliver peaceful possession of the said Vihare and of the lands unto me the said Parusala Dhammajothi Therunnanse or to my successors whenever wants and shall quit the same.

Further he or his heirs and descendants shall not waste or damage any of the aforesaid produce or profits unnecessarily.

In witness whereof we the said Parusala Dhammajothi Therunnanse and the said attorney Edanduwawe Saranankara Unnanse have set our hands and seal unto three of the same tenor and date as these presents at Polwatte in Gampola on this 22nd day of May, 1882.

(Sgd.) PARUSALA,
„ SARANANKARA

40

Witnesses :—

(Sgd.) APPUWA.
„ KIRI APPU.

(Sgd.) G. DON FRANCISCO,
Notary Public.

Exhibits.
No. D 11.
Deed No. 5774
22-5-1882
Continued.

I, GALLEGE DON FRANCISCO of Gampola in the District of Kandy, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary to the said Sauladeniyegedera Appuwe Liyanna of Selawa aforesaid and Badagedera Kiri Appu, the subscribing witnesses hereto who are known to the said two Unnanses and known to me set their signatures in my presence and in the presence of one another all at one time on this 22nd day of May, 1882, at Polwatte Office at Gampola. Further attest that the duplicate bears stamps to the value of Rs. 5 and the original bears one stamp of the value of Re. 1 brought by the said Saranankara Unnansa.

10

(Sgd.) G. DON FRANCISCO,
Notary Public.

Attested on this
22nd day of May, 1882.

SEAL.

No. D12.

Deed No. 6132.

Translation.

The Indenture of Lease executed at Yatiwawela on the 20th January, 1887, is of this purport to wit :

The Indenture of Lease made between us the two parties Parusala 20
Dhammajothi Unnanse of Meda Pansala in Malwatte Vihare of Kandy in the
Central Province of the Island of Ceylon of the first part and Viharegedera-
walawwe Mudianse Banda of Yatiwawala in Kulugammanasiapattu of
Sarasiapattu of the second part : Witnesseth.

1. That I the said Dhammajothi Unnanse for and in consideration of
the sum of Rupees Three Hundred (Rs. 300) of lawful money of Ceylon
being lease money for whole term do hereby lease unto the said Mudianse
Banda for a full term of twelve months from date hereof the tiled and straw
thatched houses standing towards the East and all the plantations standing
on the garden out of Menikcumbura-Megodawatte of about two amunams 30
in paddy sowing extent situated at Yatiwawala in Kulugammanasiapattu
of Sarasiapattu in the District of Kandy in the Central Province and bounded
on the East by above the high road leading to Matale, on the South by
the old ditch and fence belonging to me and lying towards Sinna Thamby
Officer's garden, on the West by the limit of Korale Mahatmaya's land and
the row of jak trees belonging to me and Akwatte Puncbi Banda's land and
on the North by above the Ella of Menikcumbura, which said land was

No. D 12.
Deed No. 6132
20-1-1887

inherited by me the said Dhammajothi Unnanse from my tutor Mahalle Sobitha Unnanse and which I possess uninterruptedly since a period of forty-two years and up to this day and that the said Mudianse Banda applied for and obtained this lease from me, and that he shall possess and enjoy the income of the said houses and the produce of the said plantations.

Exhibits.
No. D 12.
Deed No. 6132
20-1-1887—
Continued.

2. That the said Mudianse Banda shall pay the lease money to me the said Dhammajothi Unnanse monthly and regularly at the rate of Rupees Twenty-five per mensem and obtain receipts therefor and from date hereof to put up fences and hedges and weed and clear the said land and to thatch with
10 straw and tiles the houses when necessary, not to cut and destroy unlawfully the trees and creepers standing on the garden but protect the same and possess and enjoy the whole income of the said houses and that immediately after the expiration of the said twelve months the said Mudianse Banda shall yield and surrender the said houses and land together with this Deed of lease unto me the Lessor without claiming any expenses or compensation thereof.

3. That if the said Mudianse Banda fails and neglects to pay the lease money monthly as aforesaid then by reason of such failure I the said Dhammajothi Unnanse shall at my own accord cancel this lease, take charge of the land and reserve to myself the right to recover the arrears of lease money by due
20 course of law together with the damages which may be caused from time to time within the said term of lease to the said houses and plantations owing to the negligence on the part of the said Mudianse Banda.

4. That within the said term of lease if there be any disputes with regard to the said land I the said Lessor shall warrant and defend the same and in failure to do so I shall pay all the damages sustained by the said Mudianse Banda consequent on such failure.

That for the due performance of all the foregoing conditions we the said Lessor and Lessee do hereby bind ourselves, our heirs and assigns and on properties as required by law. In witness whereof we the said Lessor and
30 Lessee have caused this Indenture of Lease and to two as these presents to be written and set our signatures thereto and the said Lessee accepted the original Deed.

(Sgd.) PARUSALA
MUDIENSE BANDA.

Witnesses:

(Sgd.) TIKIRI BANDA
„ AUSADAHAMY.

(Sgd.) S. S. N. W. M. PINGHAMY,
N.P.

40 I, Somasinghe Nawaratne Irugalwahala Mudianselage Pinghamy of Yatiwawala in Kulugammanasiapattu of Sarasiapattu, Notary Public for Kandy District in the Central Province of the Island of Ceylon, do hereby

Exhibits.
No. D 12.
Deed No. 6132
20-1-1887—
Continued.

certify that the foregoing instrument was read over and explained by me unto the said Lessor and Lessee who are known to me in the presence of the attesting witnesses Ohettenne Walawwe Tikiri Banda of Yatiwawala aforesaid, and Dedigama Henadirennhelage Ausadahamy of Menikcumbure Kadde in Yatiwawala who are known to me and said to be known to the said parties, the same was signed by them and the witnesses in my presence and in the presence of one another on the 20th January, 1887, at my Office at Yatiwawala. This Deed was drawn according to the instructions given by both parties. The duplicate hereof bears three stamps of the value of seventy-five cents and it was agreed to pay the consideration hereof at Rs. 25 per month, and the original Deed was handed to Mudianse Banda by the said Dhammajothi Unnanse in my presence and I asked him to have the Deed registered which I attest. 10

(Sgd.) S. S. N. W. M. PINGHAMY,
Notary Public.

Attested on the 20th January, 1887.

No. D 14.
Deed No. 6366
28-2-1888

No. D14.

Deed No. 6366.

Translation.

The Indenture of Lease caused to be written and granted at Kahalla 20 in Pallegampaha of Lower Dumbara on the 28th day of February, 1888, is of this purport to wit:—

The Indenture of Lease made between us the two parties Parusala Dhammajothi Unnanse of Malwatte Vihare in Kandy of the Central Province in the Island of Ceylon of the first part and Don Adirian de Silva Weerasekera Arachchi and Medduma Hallinnege Subatheris de Silva Appuhamy, both of Kandy of the second part. Witnesseth:—

1. That I said Dhammajothi Unnanse for and in consideration of the sum of Rupees Nine Hundred (Rs. 900) of lawful money of Ceylon (calculated at the rate of Rupees One Hundred and Eighty per annum) do hereby lease 30 unto the said Don Adirian de Silva Arachchi and Don Subatheris Silva Appuhamy for a full term of five years from date hereof the row of tiles and straw thatched houses standing towards the high road and all the plantations standing on the garden out of the remaining one amunam and five lahas in paddy sowing extent out of the land called Menikcumbura-Megodawatta (excluding from the entire land the Northern Fifteen lahas in paddy sowing extent) situated at Yatiwawala in Kulugammanasiapattu of Sarasiapattu in the District of Kandy, which said remaining one amunam and five lahas being bounded on the East by the high road, on the South by Sinnathamby Officer's land and ditch and fence of Yatiwawala Korale-Mahatmaya's land, on the West 40 by fence of the remaining portion of land belonging to me and on the North

by above the Ela of Menikcumbura which said land belongs to me the said Dhammajothi Unnanse through my descending tutors and possessed by me uninterruptedly and that the said Don Adirian de Silva Arachchi and the said Subatheris de Silva Appuhamy have applied for and obtained this lease from me and they shall possess and enjoy the income of the said houses and the produce of the said plantations.

Exhibits.
No. D 14.
Deed No. 6366
28-2-1888—
Continued.

2. That I the said Dhammajothi Unnanse have received this day in advance from the said Don Adirian de Silva Arachchi and Subatheris de Silva Appuhamy a sum of Rupees Ninety being lease money due for six months out of the sum of Rupees One Hundred and Eighty payable as lease money as aforesaid, and after the expiration of the said six months from date hereof the said Lessees shall pay the remaining lease money to me the said Dhammajothi Unnanse or to anyone else residing in the said Vihare monthly and regularly at the rate of Rupees Fifteen per mensem and obtain proper receipts therefor. That from date hereof the said two lessees shall put up fences on the four boundaries of the said land, weed and clear the said land and to tile and thatch with straw the houses standing thereon, not to cut and destroy unlawfully the trees and creepers standing thereon but protect the same and possess and enjoy the produce of the said plantations and the income of the said houses and the said two Lessees shall at the expiration of the said term of lease yield and surrender the said land and the houses together with this Deed unto me the said Dhammajothi Unnanse or to any one else residing in the said Vihare free from damages and without claiming any expenses and quit the said premises.

3. That after the expiration of six months from date hereof if the said Lessees fail and neglect to pay the lease money monthly as aforesaid and allow the same to remain in arrears for two consecutive months, then in such case I the said Dhammajothi Unnanse or with the consent of the then Incumbent this lease shall be cancelled and take charge of the said land and the houses and the arrears of lease money be recovered by due course of law by me the said Dhammajothi Unnanse or by the then Incumbent. That if any damage is caused to the said land and the houses owing to any negligence on the part of the said Lessees I the said Dhammajothi Unnanse, the then Incumbent of the said Vihare shall recover such damages from the said Lessees.

4. That within the said term of lease if there be any dispute with regard to the said land I the said Dhammajothi Unnanse shall warrant and defend the same and in failure to do so I or the Incumbent of the said Vihare shall pay the damages sustained by the said Lessees.

5. That for the due performance of the foregoing conditions I the said Dhammajothi Unnanse for myself and my successors as Incumbents of the said Vihare and the said Lessees Arachchi and Subatheris de Silva Appuhamy for ourselves and our heirs do bind ourselves by these presents including our properties. In witness whereof we the said two parties have caused this

Exhibits.
No. D 14.
Deed No. 6366
28-2-1888—
Continued.

and two others of the said tenor as these presents to be written and set our signatures thereto and delivered the original Deed to the said two Lessees.

(Sgd.) PARUSALA
" DON ADIRIAN DE SILVA
" SUBATHERIS.
Witnesses :
(Sgd.) MUDIANSSE BANDA.
" AUSADAHAMY.
(Sgd.) S. S. N. W. M. PINGHAMY,
N.P.

I, Somasinghe Nawaratne Irugalwahala Mudianselage Pinghamy of 10 Siyambalagastenna in Gangawata of Yatinuwara, Notary Public for Kandy and other districts in the Central Province of the Island of Ceylon, do hereby certify that the forgoing instrument was read over and explained by me unto the said two parties who are known to me in the presence of the attesting witnesses Viharegederawalawwe Mudiansse Banda of Yatiwawela aforesaid and Henedirennchelage Ausadahamy of Menikcumbura Kade in Yatiwawala who are known to me and said to be known to the said two parties the same was signed by them and the witnesses in my presence and in the presence of one another on the 28th day of February, 1888, at my office at Kahalla. The Duplicate hereof bears three stamps of the value of Rs 2/50 supplied by the 20 said Don Adirian de Silva Arachchi. That out of the consideration hereof a sum of Rs. 90 being rent for six months was received by the said Dhammajothi Unnanse from the said two Lessees in my presence and after the expiration of six months from date hereof the remaining lease money to be paid at the rate of Rs. 15 per month and the original Deed was delivered to the said two Lessees by the said Dhammajothi Unnanse and the Lessees were asked to get this Deed registered which I attest.

(Sgd.) S. S. N. W. M. PINGHAMY
Notary Public.

Attested on the 28th February, 1888.

80

No. D 13.
Decree in D.C.,
Kandy, Case
No. 948
15-8-1890

No. D13.

Decree in District Court, Kandy, Case No. 948.

IN THE DISTRICT COURT OF KANDY.

PARUSALA DHAMMAJOTHI UNNANSE of Meda Pansala.....*Plaintiff.*

No. 948.

vs.

DENIYEWATTEGEDERA BODIYA-WADUWA of Walgowwagoda

in Kandupalata in Yatinuwara.....*Defendant.*

15th August, 1890.

It is accordingly decreed that the Deed of Lease bearing No. 3060, dated 12th September, 1879, filed with the libel in this case be and the same is hereby declared cancelled and the Plaintiff is hereby declared entitled to—

Exhibits.
No. D 13,
Decree in D.C.,
Kandy, Case
No. 948
15-8-1890—
Continued.

1. Deniyewatte of two pelas paddy sowing extent and bounded on the East by Udaveraluange Kumbura, on the South by the ditch in Induregollehena, on the West by the bank of Para Kange and on the North by the ditch in Medakelehene and the ditch in Weta Ane Hena.

2. The Eastern one pela out of Udaveraluange Kumbura of one amunam in extent and which one pela is bounded on the East by the boundary edge of Palleveraluange, on the South by the bank and ditch in Induragollehena, on the West by the remaining portion of Veraluange Kumbura and on the North by the bank and ditch in Uttuwangoda and that Defendant be ejected therefrom and Plaintiff be put and placed in possession thereof.

It is further decreed that Defendant do pay Plaintiff the sum of Thirty Rupees as and for damages already sustained and a further sum of Rupees Twenty-four yearly from first April, 1888, until possession of the said lands is given up to Plaintiff and costs of this action. Execution not to issue for two months.

20

(Sgd.) A. C. LAWRIE,
D.J.

No. P12.

Deed No. 1697.

No. P 12.
Deed No. 1697
16-6-1894

True Copy

This Indenture of Lease made and entered between Akwatte Dewamitta Unnanse, Incumbent of Degaldoruwa Vihare (hereinafter called the said Lessor of the one part and John Arnold Burmester, Manager of the Ratwatte Cocoa Company (Colombo) hereinafter called the said Lessee) of the other part witnesseth.

30 That the said Lessor for and in consideration of the sum of One Hundred and Thirteen Rupees (Rs. 113) that is to say a sum of Fifty Rupees and fifty cents in hand paid by the said Lessee to the said Lessor (and which the said Lessor doth hereby acknowledge) and the balance to be paid by the said Lessee to the said Lessor in manner hereafter mentioned and of the covenants and conditions on the part of the said Lessee to be observed and performed doth hereby let, lease and demise unto the said Lessee and his successors and assigns the lands, premises and plantations fully described and set forth in the

Exhibits.
No. P 12.
Deed No. 1697
16-6-1894—
Continued.

schedule A hereunder written for the space or term of twenty years commencing from this date and ending on the sixth day of June One Thousand Nine Hundred and Fourteen upon the following conditions :—

First.—That the said Lessee shall have the full force and undisturbed possession, use and occupation of the said lands, premises and plantations during the said term of twenty years and that at the expiration of the said term the said Lessee shall peaceably deliver over and surrender the said lands, premises and plantations in good order and condition without committing any waste or damage and without claiming any compensation for any improvements he the said Lessee may have made thereon or for any plantations 10 which may then exist on the said land with the option however renewing the Lease in the same terms for such period as shall then be agreed on.

Second.—That the said Lessee shall pay the said Lessor the balance sum of Rupees Fifty-six and Fifty Cents in yearly instalments of (Rs. 5-65) Five Rupees and Sixty-five cents per annum on application by the said Lessor yearly and every year on the sixth day of June commencing from the sixth day of June One Thousand Nine Hundred and Four.

Third.—That if the said balance rent shall not be paid on application by Lessee on due dates as aforesaid and shall remain unpaid for thirty days after it falls due and payable on notice given then and in such case this lease shall be determined and it shall be lawful for the said Lessor or his heirs, executors, administrators or assigns at any time thereafter to enter into and upon the said demised premises and the same to have again re-possess and enjoy as if these presents had not been executed. 20

Fourth.—That the plantations on the said land are to be considered the purchased property of the said Lessee the value of the same having been paid by the said Lessee to the said Lessor.

Schedule "A" above referred to :

All that land called and known as Viharewatta situate at Welegala or Aterapitiya Udasiapattu, Matale District, Central Province, bounded on the North by Humuray Kumbura belonging to Magiris Appu, on the East by Wewe Kumbura belonging to Tikiri Banda, on the South by Hatalanga Deniya and on the North by Hemuray Kumbura containing in extent three acres three roods and three perches as per plan dated the sixth day of July, One Thousand Eight Hundred and Ninety-three by Joseph Robert Holloway, Licensed Surveyor annexed to the original hereof. 30

In witness whereof the parties hereto set their hands at Kandy this sixth day of June One Thousand Eight Hundred and Ninety-four.

Signed by the Lessor at Kandy
on this 6th day of June, 1894.

In the presence of:

(Sgd.) DEWAMITTA.

(Sgd.) T. B. PARANATALA

„ Illegibly (In English)

„ E. L. SIEBEL

Notary Public.

10 Signed by the Lessee at Kandy
this 16th day of June, 1894.

In the presence of:

(Sgd.) J. A. BURMESTER,

(Sgd.) ROBERT A. WIJEKOON. *Supdt., Ratwatte Cocoa Co., Ltd.*

(Sgd.) V. A. WENDT.

(Sgd.) E. L. SIEBEL,

Notary Public.

No. 1697.

I Edmund Lawson Siebel of Kandy, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary unto Akwatte Dewamitta Unnanse who is known to me in the presence of Tikiri Banda Paranatala and Benjamin Alexander Grebi, both of Kandy the subscribing witnesses hereto, both of whom are known to me, the same was signed by the said Akwatte Dewamitta Unnanse and also by the said witnesses and by me the said Notary in my presence and in the presence of one another, all being present at the same time at Kandy on this sixth day of June One Thousand Eight Hundred and Ninety-four.

And I further certify that a stamp of the value of Fifty cents is affixed to the Duplicate of this Instrument supplied by me. Cheque for Rs. 56-50 given in my presence.

30 Which I attest.

Date of Attestation:
6th June, 1894.

(SEAL)

(Sgd.) E. L. SIEBEL.

Notary Public.

I, Edmund Lawson Siebel of Kandy, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over by John Arnold Burmister who is known to me in the presence of Robert Adrian Wijeyakoon and Victor Augustus Wendt, both of Kandy, the subscribing witnesses thereto both of whom are known to me the same was signed by the said John Arnold Burmister and also by the said witnesses and by me

Exhibits.
No. P 12.
Deed No. 1697.
16-6-1894—
Continued.

Exhibits.
No. P 12.
Deed No. 1697
16-6-1894—
Continued.

the said Notary in my presence and in the presence of one another, all being present at the same time at Kandy on this sixteenth day of June One Thousand Eight Hundred and Ninety-four.

Which I attest.

Date of Attestation :
16th June, 1894.

(SEAL)

(Sgd.) E. L. SIEBEL,
Notary Public.

No. D 15.
Envelope
25-12-1900

No. D15 Envelope

10

Post Office seal
Kandy,
Dec. 25, 1900.

To be urgently delivered to
Parusala Nayake Hamuduruwe residing in Meda Panasla in Malwatte
Vihare, Kandy.

Translated by :
(Sgd.) Illegibly.
Sworn Translator.

No. D 1.
Result of
Application
for search of
Deeds
23-2-1934

No. D1.

20

Result of Application for Search of Deeds.

No. 7.

RESULT OF SEARCH FOR DEEDS.

Application No. and Date ... 529 of 21-2-34.
Name of Applicant ... Mr. M. A. VANDERWALL.
Name of Land (if any) ... Meda Pansala, alias Malwatte, etc.

As far as can be ascertained, no sannas of the description given in the above application has been registered in the Office under Ordinance No. 6 of 1866 and 15 of 1867.

(Sgd.) E. S. JAYAWARDANE, 30
Registrar.

The Land Registry,
Kandy, 23-2-1934.

No. D2.

Exhibits.
No. D 2.
Death Certificate
16-11-35

DEATH CERTIFICATE

CEYLON

No. 4787.

*Central Province:**Kandy Division.**Kandy Town Division.*

- | | | | | |
|----|-----|---|--------|---|
| | 1. | <i>Date and Place of Death</i> | ... | Sixth (6th) June, 1902, Malwatte Vihare. |
| | 2. | <i>Name in Full</i> | ... | PARUSALA ANUNAYAKE
UNNANSE. |
| 10 | 3. | <i>Sex and Nationality</i> | ... | Male, Sinhalese. |
| | 4. | <i>Age</i> | ... .. | Seventy-eight (78) years. |
| | 5. | <i>Rank or Profession</i> | ... | Buddhist Priest. |
| | 6. | <i>Names of Parents</i> | ... | Not known. |
| | 7. | <i>Cause of Death and Place of Burial or Cremation</i> | ... | Old age (Certifying Medical Practitioner: G. P. Hay). |
| 20 | 8. | <i>Name and Residence of Informant, and in what capacity he gives Information</i> | ... .. | P. B. Akwatte, Ambuvangalle Polgahawella. Nephew the nearest relative present at death. |
| | 9. | <i>Informant's Signature</i> | ... | (Sgd.) P. B. Akwatte. |
| | 10. | <i>When Registered</i> | ... | Sixth (6th) June, 1902. |
| | 11. | <i>Signature of Registrar</i> | ... | (Sgd.) D. G. Kreltszheim. |

I, **Harold Melder**, Assistant Provincial Registrar of Births and Deaths of the Kandy District, do hereby certify that the foregoing is a true copy of the Original Register of Deaths of **D. G. KRELTSZHEIM**, Registrar of the Kandy Town Division, of the Kandy District, filed in this Office, and the same is granted on the application of A. Dewamitta Unnanse.

30 Provincial Registrar's Office,
Kandy, 16th November, 1935.

(Sgd.) H. MELDER,
Assistant Provincial Registrar.

Exhibits.
No. D 3.
Death Certificate
23-11-35

No. D3.

DEATH CERTIFICATE

*Sabaragamuwa Province
Gandolaha Division*

Kegalle District.

- | | | | |
|---|-----|---|----|
| 1. <i>Date of Death and Place</i> | ... | Year 1901-6-8. 8th June, 1901, at Embuwangala. | |
| 2. <i>Name in Full</i> | ... | AKWATTE DEWAMITTA UNNANSE. | |
| 3. <i>Male or Female and Race</i> | ... | Male. Sinhalese. | |
| 4. <i>Age</i> | ... | 47 years. | 10 |
| 5. <i>Occupation or Profession</i> | ... | Buddhist Priest. | |
| 6. <i>Names of Parents</i> | ... | Father : Akwatte Karunanayaka Mudiyanse Lage Appuhamy Mohottala.
Mother : Akwatte Karunanayaka Mudiyanse Lage Dingiri Mahatmaya. | |
| 7. <i>Cause of Death, place of Funeral or Cremation</i> | ... | Consumption, Paluwatte in Wattarama | |
| 8. <i>Name of Informant, place of residence, and in what capacity he gave information</i> | ... | As a resident in the house of the deceased Radagolahelallage Tikiri Banda of Ambuwangala | 20 |
| 9. <i>Signature of Informant</i> | ... | (Sgd.) Tikiri Banda. | |
| 10. <i>Date Registered</i> | ... | 1901 24th June, 1901. | |
| 11. <i>Signature of Registrar</i> | ... | (Sgd.) L B Panabokke | |

Translated by,
(Sgd.) Illegibly.
Sworn Translator

30

I, C. M. Agalawatte, Second Registrar-General of Marriages, Births and Deaths in the Island of Ceylon hereby certify that the foregoing is a true extract from the Duplicate Register of Deaths of **L. B. PANABOKKE**, Registrar of Gandolaha filed in this office, and the same is granted of the application of Revd. A. Dewamitta.

(Sgd.) C. M. AGALAWATTE,
2nd Asst. Registrar-General.

Registrar-General's Office,
Colombo, 23rd November, 1935