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Supreme Court of Ceylon No. 346 (Final) of 1954

UNIVERSITY OF LONDON W.C.1. 1 G FEB 1932 INSTITUTE OF ADVANCED LEGAL STUDIES District Court, Kegalle. No. 6269

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

BETWEEN

AND

- 1. Mrs. CHARLOTTE MARY CLARA FERNANDO of "Credon", 18 Castle Street, Colombo.

RECORD OF PROCEEDINGS

PART I

INDEX

-

PART I.

Serial No.	Description of Document		Date	Page
I	Journal Entries	•••	16.8.49 to 13.8.56	I
2	Plaint of the Plaintiff		16.8.49	16
3	Answer of the defendant		20.12.49	23
4	Amended Plaint of the plaintiff		13.7.50	25
5	Objections of the 1st Defendant		31.7.50	29
6	Amended Answer of the 1st defendant and the Ansor of the 2nd defendant	swer	21.11.50	30
7	Affidavit of the Plaintiff		1. 7.51	35
8	Affidavit of the 1st defendant	••	15.7.51	36
9	Affidavit of the 2nd defendant	•••	15.7.51	37
10	Statement of Objections of the Defendants		16.7.51	38
11	Issues framed		19.7.51	39
12	Plaintiff's evidence		19.7.51	41
13	Further amended plaint of the Plaintiff	• •	23.7.51	45
14	Further amended answer of the defendants		14.8.51	51
15	Motion of the Proctor for defendants		18.8.51	54
16	Further issues framed		20.8.51	55
17	Plaintiff's evidence		-	57
18	Plaintiff's application for a Commission to rea H. C. Rodale's evidence	cord	19.2.52	105
19	Order of the District Court refusing plaintiff's appl tion for a Commission to record H. C. Roda evidence	ica- ale's	19.2.52	106
20	Plaintiff's application for postponement of case		19.2.52	107
21	Order of the District Court refusing postponement		19.2.52	108

Serial No.	Description of Document	Date	Page
	· · ·		
22	Defendants' evidence	_	109
23	Petition of appeal of Plaintiff against the orders of 19th February 1952	21.2.52	112
24	Defendants' Evidence		115
25	Order of the Supreme Court dismissing plaintiff's appeal	11.7.52	121
26	Decree of the Supreme Court dismissing plaintiff's appeal	11.7.52	122
27	Defendants' Evidence	·	122
28	Addresses to Court		158
29	Judgment of the District Court	31.3.53	177
30	Decree of the District Court	31.3.53	184
31	Petition of appeal of the defendants to the Supreme Court	1. 4.53	190
32	Judgment of the Supreme Court	11.5.56	194
33	Decree of the Supreme Court	11.5.56	206
34	Application for Conditional leave to appeal to the Privy Council	4.6.56	207
35	Decree granting Conditional leave to appeal to the Privy Council	16.7.56	208

Application for Final leave to appeal to the Privy

Council

Decree granting Final leave to appeal to the Privy Council 3.8.56

10.8.56

209

211

36

PART I.—Contd.

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

BETWEEN

AND

RECORD OF PROCEEDINGS PART I

^{1.} Mrs. CHARLOTTE MARY CLARA FERNANDO of "Credon", 18 Castle Street, Colombo.

PART I

No. 1

Journal Entries

IN THE DISTRICT COURT OF KEGALLA

No. 6269. Class 5. Value : Rs. 50,839/-Nature : Rei Vindicate Procedure : Regular.

10 MRS. CECILY H. M. PEIRIS of Kegalla.....Plaintiff. vs.

MRS. C. M. CLARA FERNANDO of Colombo.........Defendant.

JOURNAL

The 16th day of August, 1949.

Mr. L. A. Goonewardane files appointment and plaint together with pedigree and schedule of documents. Plaint accepted and summons ordered for 14.9.49.

> Intd. W. T., District Judge.

20 I. 9. 49.—Summons issued with precept returnable the day of Ss. issued on defdts. to W. P. Colombo.

14. 9. 49.—Mr. Goonewardane for pltff.

No return to summons on defdt. She is absent. Await and reissue for 27. 10. 49.

> Intd. W. T., D. J.

- 15. 9. 49.—Return to ss. Filed.
- 22. 9. 49.—Ss. reissued to Colombo.
- 30 4. 10. 49.—Return to ss. filed.
 - 27. 10. 49.—Mr. Goonewardane for pltff. Ss. served on defdt. She is Mr. J. H. F. files proxy. Ans. 20.12.49.

Intd. W. T.

20. 12. 49.—Answer due from Mr. Fernando—filed. Plan necessary. S. Fees & Comm. 31.1.50.

Intd. W. T.

No. i Journal Entries 16.8.49 to 13.8.56.

No. 1 Journal Entries 31. 1. 50.—Receipt for survey fees and comm. due filed. Issue comm. 28. 4. 50. 16.8.49 to Intd. W. T. 13.8.56. -Continued. 31. 1. 50.—Commission issued to Mr. A. J. Frugtniet, Surveyor returnable 25.4.50. 24. 4. 50. -Mr. Frugtniet, surveyor, files plan No. 1078/1950 with connected papers and moves for Rs. 30/- in deposit. I. Pay. 2. Mention on 28. 4. 50. Intd. W. T., 10 D. J.24. 4. 50.—Reqn. No. 117 of Rs. 30/- issued. 28. 4. 50.—Mr. Goonewardane for pltff. Surveyor returns commission duly executed with Plan and report and Bill for Rs. 600/-. B.S.F. paid direct. Consideration 24.5.50. Intd. W. T., D. J.24. 5. 50. —Mr. Gunawardane for pltff. 20 Mr. Fernando for defdts. Consideration of Plan and report for 16.6.50. Intd. W. T. 16. 6. 50.—Consideration of Plan and report. Mr. L. A. G. moves to file amended plaint. Amended plaint on 13. 7. 50. Intd. W. T. 13. 7. 50.—Mr. Goonewardane for pltff. Mr. Fernando for defdt. Amended plaint due-filed. Issue ss. on 2nd defdt. for 30 30. 8. 50. Intd. W. T., D. J. 13. 7. 50.-Mr. Goonewardane for pltff. files affidavit and moves that defdts. do produce the following documents to enable same to be translated to the surveyor for superimposition on his Plans No. 1078 and 1077. Plan No. 1340 dated 22. 7. 27. I. Plan No. 1443, made by Mr. L. E. Markus. 2. He also moves to fix a date before 3rd Sept., 1950 to record the evidence of the pltff. and her husband who 40 are sailing for England. Proctor for defdts. objects. Call on bench 19.7.50. Intd.... D. J.

	19.	7. 50.—Case called. <i>Vide</i> J. E. of 13.7.50. Objections call 31.7.50. No. 1 Journal Entries Intd. W. T. ^{16.8.49} to
	31.	7. 50.—Mr. Goonewardane for pltff. Mr. Fernando for defdt. Case called. Vide J.E. of 19.7.50. Objections filed.
		Inq. 16.8.50. Intd. W.T.
10	4.	8. 50.—Mr. Fernando for 1st defdt. files affidavit to be read in evidence at the inquiry on the 16th instant. File and mention on 16. 8. 50.
		Intd. W. T., A. D. J.
	16.	8. 50.—Inquiry 1. Mr. Goonewardane for pltff. Mr. Fernando for defdt.
		 Vide J.E. of 4.8.50. Application of pltff. to have evidence recorded De Bene Esse is withdrawn. By consent vacate.
		Call on 30. 8. 50. Intd. P. A. de S.,
20		A.D.J.
	18.	8. 50.—Ss. issued on 2nd defdt. to W.P. ret'ble on 28.8.50. Vide J.E. of 13.7.50.
	30.	 8. 50. —Mr. Goonewardane for pltff. Mr. Fernando for defdt. I. Case called.
		2. Ss. on 2nd defdt. not served. Address insufficient.
		Reissue for 27. 9. 50. Intd. P. A. de S., D.J.
30	Ι.	9. 50.—Ss. reissued on 2nd defdt. ret'ble 24.9.50 to W.P.
		Intd. K. S.
	27.	9. 50.—No return to ss. on 2nd defdt. She is absent. Mr. Fernando files proxy, of attorney of 2nd defdt.
		Answer 7.11.50. Intd. W.T., D. J.
	-	10. 50. —Return to ss. filed.
	<u>7</u> .	11. 50.—Answer of 2nd defdt. due from Mr. Fernando for 21.11.50. Intd. W. T.

No. 1 Journal Entries 21. 11. 50.—Answer of 2nd defdt. due from Mr. Fernando. Amended answer of 1st defdt. filed. 13.8.56 —Continued. Intd. W. T.

> 25. I. 51.—Mr. Gunawardene for plaff. with notice to proctor for deft. files list of witnesses and documents and moves for summons.

> > 1. File.

- 2. S.S. on witnesses 1, 2, 8, 9, 10, 11, 12, 13, 14, 15 & 21 allowed.
- 3. S.S. on 3, 4, 5, 6 & 7 allowed on certified copies being obtained.
- 7. 2. 51.—Mr. Fernando for defts. with notice to proctor for plff. files list of witnesses and moves for summons. Allowed.

Intd. W. T., D. J.

Intd. W. T.,

D. J.

6. 2. 51.—Mr. Fernando for defdts. with notice to Proctor for pltff.
31. 1. 51.
31. 1. 51.
31. 1. 51.
31. 1. 51.
31. 1. 51.
31. 1. 51.
31. 1. 51.
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36. 51.
37. 51.
38. 51.
39. 51.
30. 7 in schedule B thereof has been described as Mulanagawa Mukalana whereas it should be Bulangawa Mukalana now described by the defdts. He moves to amend answer of the defdt. by the addition of the paragraph as stated therein.
Allowed. File.

Intd. W. T.

22. 2. 51.—Trial 1. Mr. Goonewardane for pltff. Mr. Fernando for defdts.

Trial refixed for 2 and 3 July, 1951.

Intd. W. T.

15. 3. 51.—Mr. Fernando for defdts. states as the trial dates of this case 2nd and 3rd July, 1951 do not suit the defdts' Counsel, Mr. N. E. Weerasooria, K.C., as he would not be able to attend Court on said dates, moves that the Court be pleased to refix this case for some other date. Proctor for pltff. consents provided it is called on Monday, 19th for dates.

Call 19. 3. 51.

Intd. W. T.

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 19. 3. 51.—Mr. Goonewardane for pltff. Mr. Fernando for defdts. Case called. Vide J.E. of 15.3.51. Trial refixed for 19, 20, 30, 31 July, 1951.

No. t Journal Entries 16.8.49 to 13.8.56. ---Continued.

Intd. W. T.

6. 6. 51.—Mr. Gunawardane for pltff. states by a clerical error in para. 21 of his amended plaint the date year appearing thereon has been put in as 1929 which should read properly 1927. He moves to amend the figure 1929 in para. 21 of amended plaint to read 1927. Proctor for defdt. consents. Allowed.

> Intd. N. S., D. J.

3. 7. 51.—Mr. Gunawardane for pltff. files supplementary affidavit from pltff. and for reasons stated in her affidavit dated 20th June, 1950 filed under J. E. dated 13.7.50 (only the first part being relevant and necessary) moves that notice be issued on the I and 2 defdts. personally and also on Proctor for defdts. to produce in Court on 16th July, 1951, the plan Nos. 1340, 1342, 1443 and 1444 made by L. E. Markus, Licensed Surveyor (now dead) and for this purpose he moves that the Court be pleased to allow him to have this notice served on the defdts. by special Fiscal Marshall, Colombo. He also files addl. list of witnesses with notice to Proctor for defdts. and moves to issue summons through Fiscal on witnesses 3, 4, 5, 6, 7 in his list filed on 25th Jan. 1951, batta being deposited as follows :—

> He moves for summons in hand on 10, 15 and 23 in original list Nos. 23 and 4 in addl. list of witnesses. He also moves for summons on the defdts. to produce at the trial the items No. 22 in the original list and No. 3 in the addl. list filed.

- 1. Allowed for 16.7.51.
- 2. File.
- 3. and 4. allowed.
- 5. allowed.

Intd. A. W., A. D. J.

40 5. 7. 51.—Ss. on 10, 15 and 23 witnesses of pltff. issued in hand. Notice on 1 and 2 defdts. to Fiscal, W. P., Colombo issued in hand. Notice on defdt's Proctor issued to D. F., Kegalla, ss. issued on 3 witnesses to Kegalla, on 6 witnesses to Fiscal, W. P. ret'ble on 16.7.51. (Received all summons and notices to be served by hand and Special Marshall—Sgd. L. A. Goonewardane, 5/7).

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No. 1 II. 7. 51.-Mr. Fernando for defdt. with notice to Proctor for pltff. Journal Entries files addl. list of witnesses and moves for summons in hand. 16.8.49 to I. File. 2. Allowed. 13.8.56 Continued. Intd. N. S., D. J. 12. 7. 51.—Mr. Fernando for defdts. with notice to Proctor for pltff. files addl. list of witnesses and moves for summons in hand. 1. File. 2. Allowed. Intd. N. S., D. J. 10 16. 7. 51.—Mr. Goonewardane for pltff. Mr. Fernando for defdts. No return to notice on Proctor for defdts. and on I and 2 defdts. to produce documents—Plans Nos. 1340, 1342, 1343 and 1443 made by Mr. L. E. Markus. Objections filed. Inquiry on 19.7.51. Intd. N. S., D, I.16. 7. 51.—Proctor for pltff. with notice to proctor for defdts. files pltff's addl. list of witnesses. File. 20 Intd. N. S., D. J. 19. 7. 51.—Trial 2 & Inquiry. Mr. Goonewardane for pltff. Mr. Fernando for defdts. I. Pltffs addl. list of witnesses & documents filed. 2. Proctor for defdts. files 2 addl. list of witnesses and moves for ss. Proctor for pltff. objects. Vide proceedings. Amended plaint on 23.7.51. 30 Intd. N. S. 20. 7. 51.—Requisitions for Batta issued as follows :— I. Rs. 25/- to M. E. Weerakoon, Tea Control Dept., Colombo 2. Rs. 25/- to Labour Inspector, Kegalla 3. Rs. 7/50 to Mr. K. Shanmuganathan (Proctor consents to payment). Intd. K. S. 23. 7. 51.—Mr. Goonewardane for pltff. Mr. Fernando for defdts. Amended plaint filed. Amended Answer on 14.8.51. 40 Intd. N. S., D. J.

I. 8. 51.—Mr. Gunawardane for pltff. with notice to proctor for defdts. No. 1 Journal Entries moves to amend the further amended plaint by recasting para. 32 as stated therein. Proctor for defendants have received notice with copy. File.

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Intd. N. S., D. I. 16.8.49

to 13.8.56

Continued.

3. 8. 51.—Mr. Fernando for defdts. states as the Counsel for the defdts. Mr. N. E. Weerasooria, K.C. is ill and unable to attend Court for the trial of this case on 17th, 20th and 24th instant, he moves that the trial be postponed for some other dates. Mr. Gunawardene, Proctor for the pltff., objects and states that the pltff. has three Junior Counsels, two of whom are most senior who have been briefed by him, and that his client leaves for England on 3.9.51 and will not return for $5\frac{1}{2}$ years.

Call on 4.8.51.

Intd. N. S., D. I.

20 3. 8. 51.—Mr. Fernando, Proctor, for defdts. moves that notice be issued on pltff. to produce or cause to be produced for inspection of defdts. on a date prior to the trial date at the office of the Proctor for pltff. the documents mentioned in motion for the purpose of making tracings. Affidavit of 2nd dedft. filed.

Issue notice for 14.8.51.

Intd. N. S., D. J.

4. 8. 51.—Mr. Goonewardane for pltff.

Mr. Fernando for defdts.

Case called. Vide J.E. of 3.8.51 to refix date of trial. Of consent, trial on 20th, 21st and 24th August, 1951.

Intd. N. S., D. J.

7. 8. 51.—Notice issued on pltff. to W. P., Colombo ret'ble 13.8.51.

11. 8. 51.—Ss. on 2 witnesses of pltfl. to W. P. issued in hand, and 1 ss. to Kegalla ret'ble 18.8.51.

K. R. for Rs. 35/- batta filed.

Intd. K. S.

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No. 1 Journal Entries 14. 8. 51.—Mr. Gunawardane for pltff.

Mr. Fernando for defdts.

Vide J.E. of 3.8.51. Return to notice on pltf. to produce documents for inspection of defdts. due.Both parties produce the necessary documents.Proctor for pltff. produces only 2 documents with motion. Amended Answer filed. Trial date to stand.

Intd. N. S., D. J.

14. 8. 51.—Mr. Fernando for defdts. with notice to proctor for pltff. 10 files addl. list of witnesses and moves for summons in hand.
 I. File. 2. Allowed.

Intd. N. S., D. J.

14. 8. 51.—Mr. Gunawardane for pltff. files addl. list of documents and witnesses and moves for summons on 1 and 3 witnesses in hand to be served through Fiscal, Colombo.

- I. File.
- 2. Allowed.

Intd. N. S., 20 D. J.

15. 8. 51.—Mr. Gunawardene for pltff. with notice to Proctor for defdt. files list addl. of witnesses and documents in the above case.

- I. File
- 2. Allowed.

Intd. N. S., D. J.

16. 8. 51.—K.R. 555/15.8.51 for Rs. 15/- filed. 2. ss. on P/W. issued in hand.

17. 8. 51.—Proctor for defdts. with notice to Proctor for pltff. files 30 2 addl. list of witnesses of defdts. and moves for ss. on them. Re witness I in list (51a) obtain certified copies. Subject to this allowed.

Intd. N. S., D. J.

20. 8. 51.—Mr. Fernando for defdts. files defdts. addl. list of witnesses and moves for ss. on 2nd witness to be issued in duplicate, one to Fisal, W.P. and one to D.F., Kegalla for 21st instant. Proctor for pltff. objects, as he, at this late hour, cannot get in touch with his client or his Counsel. File.

> Intd. N. S., D. J.

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to 13.8.56. 13.8.56.

20. 8. 51.—Trial (3). Mr. Gunawardane for pltff. No. 1 Journal Entries Mr. Fernando for defdts. 16.8.49 Vide proceedings. Another motion with list of witnesses filed by defdt. Further hearing on 21.8.51. to 13.8.56 Continued. Intd. N.S., D. J.21. 8, 51.—Trial (Further hearing). Mr. Goonewardane for pltff. Mr. Fernando for defdts. 10 Vide proceedings. Further trial on 24.8.51. Intd. N. S., D. J. 24. 8. 51. -- Further trial. Mr. Goonewardane for pltff. Mr. Fernando for defdts. Vide proceedings. Further trial on 31.8.51 and 1.9.51 (31.8.51) being subject to Mr. Weerasooria's convenience. Intd. N. S., D. J. 31. 8. 51.—Further trial. Appearances as above. 20 Mr. Adv. Weerasuriya, K.C. is absent. Trial 1.9.51. Intd. N. S., D. J. I. 9. 51.—Further trial. Appearances as above. Vide proceedings. Further hearing on 23.11.51, 13th and 14th of December, 1951, and if necessary 31.1.52 and I.2.52. Intd. N. S., D. J. 23. 11. 51.—Further hearing. Mr. Goonewardene for pltff. 30 Mr. Fernando for defdts. Vide proceedings. Further hearing on 13, 14th Dec. 1951. Intd. N.S., D. I. 4. 12. 51.—Mr. Goonewardane for pltff. moves to take out summons in hand on Mr. C. B. Kumarasinghe, Asst. Controller of Labour, who appears as witness No. 1 on list dated 10th July, 1951. J.E. of 16.7.51. Allowed. Intd. N. S., D. J. 40

No. 1 Journal Entries 13. 12. 51.—Further trial. Mr. Goonewardane for pltff. 16.8.49 to 13.8.56 Defendants' addl. list of witnesses filed. Proctor for pltff.

-Continued.

objects. Further trial 14/12.

Intd. N. E.

14. 12. 51.—Further trial. Mr. Goonewardane for pltff. Mr. Fernando for defdts.

Vide proceedings. Further hearing on 31.1.52 and 1.2.52.

Intd. N. S., D. J. 10

22. I. 52.—Mr. Goonewardane for pltff. moves to be allowed to take summons in hand on Mr. W. Hermon and Mr. L. G. Montgomerie whose names appear as witnesses No. 15 in his list dated 24.1.51 and witness No. 5 in list dated June, 1951. Allowed.

Intd. N. S., D. J.

- 23. 1. 52.—Vide J.E. of 22.1.52. Ss. on the 2 witnesses issued in hand.
- 29. I. 52.—3 ss. on defdts' witness issued in hand.
- 31. 1. 52.—Further trial. Mr. L. A. Goonewardane for pltff. Mr. J. H. Fernando for defdts.

Vide proceedings. Trial on 19.2.52.

Intd. N. S., D. J.

12. 2. 52.—As the above case which has been fixed for 31st January, and 1st Feb. was postponed without being taken up on 1st Feb., Mr. J. H. Fernando for defdts. moves to endorse and reissue in hand the attached two summons on defdts' witnesses free of stamp duty. Reissue on fresh stamps.

Intd. N. S., D. J.

- 14. 2. 52.—Ss. reissued and handed.
- 18. 2. 52.—Ss. on one witness of defdts' issued and handed.
- 19. 2. 52.—Further trial. Mr. L. A. Goonewardane for pltff. Mr. J. H. Fernando for defdts. *Vide* proceedings. Petition and affidavit filed.

Intd. N. S., D. J. 20

22. 2. 52.—Mr. I. A. Goonewardane, Proctor for plaintiff-appellant, files petition of appeal against the order of this Court dated 19.2.52 from the plaintiff together with S. C. Judgment form, Secretary's Certificate in appeal, both duly stamped, and application for typewritten copy of appeal brief and moves that same be accepted. He also moves that Security, notice of security and notice of appeal be dispensed with and that the record be forwarded to S.C. in due course for hearing Interlocutory appeal. Proctor for defdts'-respdts. receives notice and consents

II

I. Accept.

appeal.

2. Security, notice of security and notice of appeal dispensed with.

to dispense with security, notice of security and notice of

3. Forward interlocutory appeal.

Intd. N. S., D. J. No. 1

Journal Entries

16.8.49

to 13.8.56.

-Continued.

17. 3. 52.—Trial. Mr. L. A. Goonewardane for pltff.

Mr. J. H. Fernando for defdts.

(Vide J.E. of 22.2.52 Interlocutory appeal filed). against the order of 19.2.52. Vide proceedings. Further trial on 14th, 15th and 16th July, 1952.

> Intd. N. S., D. J.

21. 3. 52.—M/s. Gunawardane and Fernando for pltff. and defdts. respectively move that further portions stated therein be typed and issued with the briefs of Counsel for purposes of the appeal in this case.

Allowed on deposit of copying fees.

Intd. N. E., A. D. J.

13. 5. 52.—Letters written to Messrs. Gunawardane and J. H. Fernando re deposit of fees for typewritten copies of appeal briefs. (Letters filed of record).

Intd. J.'S.

26. 6. 52.—Mr. L. A. Goonewardane for pltff. Mr. J. H. Fernando for defdt. Case called *re* Interlocutory appeal. Forward record to S.C. Further trial is fixed on 14th, 15th, 16th of July, 1952.

Intd. N. S., D. J.

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Intd. N.S., • D. J. 14. 7. 52.—Further trial. Mr. L. A. Goonewardane for pltff. Mr. Fernando for defdts. 10 Vide proceedings. Further trial on 18th, 10th, 20th August, 1952. Intd. N. S., D. J. 18. 7. 52.—The Registrar S.C. sends the S.C. order in the above case. File Intd. N. S., D. J.12. 8. 52.—Mr. Fernando for defdts. moves that the summons on the of defdts. be ordered to be issued in hand. Allowed. Intd. N. E., A. D. J. 13. 8. 52.—5 ss. on defdt's witnesses issued in hand. 18. 8. 52.—Further trial. Mr. L. A. Goonewardane for pltff. Mr. Fernando for defdts. Vide proceedings. Further hearing on 19.8.52. Intd. N. S., D. I. 19. 8. 52.—Further hearing. Mr. L. A. Goonewardane for pltff. 30 Mr. Fernando for defdts. Vide proceedings. Further hearing on 20.8.52. Intd. N. S., D. J. 20. 8. 52.—Further hearing. Mr. L. A. Goonewardane for pltff. Mr. Fernando for defdt. Vide proceedings. Further hearing on 8th, 23rd, 24th of Sept. and 1st October, 1952. Intd. N. S., D. J. 40

No. 1 Journal Entries 12. 7. 52.—The Registrar, S.C. returns the record in the above case as requested in letter of the 26th instant and informs Court that the Interlocutory appeal has been dismissed and that the S.C. Decree will be sent in due Course. I. File.

2. Proctors to note.

16.8.49 to

13.8.56 —Continued.

witnesses in the several lists of witnesses filed on behalf 20

	-5
	8. 9. 52.—Further hearing. Mr. L. A. Goonewardane for pltff. Mr. Fernando for defdt. ^{No. 1} Journal Entries to
	Vide proceedings. Further hearing on 24.9.52.
	Intd. N. S., D. J.
	24. 9. 52.—Further hearing. Mr. L. A. Goonewardane for pltff. Mr. Fernando for defdts.
	Vide proceedings. Further hearing: Addresses on 3, 4, 5,
10	6th Nov., 1952. Intd. N. S., D. J.
	 3. 11. 52.—Addresses. Mr. L. A. Goonewardane for pltff. Mr. J. H. Fernando for defdts. <i>Vide</i> proceedings. Further hearing on 4.11.52.
	Intd. N. S., D. J.
	4. 11. 52.—Further hearing. Mr. L. A. Goonewardane for pltff. Mr. Fernando for defdts.
20	Vide proceedings. Further hearing on 5.11.52.
	Intd. N. S., D. J.
	5. 11. 52.—Further hearing. Mr. Goonewardane for pltff. Mr. Fernando for defdts.
	Vide proceedings. Further hearing on 6.11.52.
	Intd. N. S., D. J.
	6. 11. 52.—Further hearing. Mr. Goonewardane for pltff. Mr. Fernando for defdts.
30	<i>Vide</i> proceedings. Documents with lists on 17.11.52. Judgment 20.1.53.
	Intd. N. S.,

. 13

•

D. J.

No. 1 Journal Entries 17. 11. 52.—Mr. Goonewardane for pltff. 16.8.49

to

13.8.56. -Continued. Mr. Fernando for defdts.

Documents due. Documents for 21.11.

Intd. N.E.

- 18. 11. 52.—Mr. L. A. Goonewardane files plaintiff's documents marked PI to P178.
 - Intd.
- 21. 11. 52.—Mr. H. Fernando for defendant files documents marked DI to D9I.
- 20. 1. 53.—Mr. Goonewardane for pltff.

Mr. Fernando for defdts.

Judgment not ready. Judgment later.

Intd. E. A. V. de S., D. J.

31. 3. 53.—Mr. Goonewardane for pltff.

Mr. Fernando for defdts.

Vide judgment delivered in open Court in the presence of Mr. Goonewardane, and Mr. Adv. C. R. Gunaratne takes notice on behalf of Mr. Fernando.

- Intd. E. A. V. de S., 20 D. J.
- 1. 4. 53.-Mr. Fernando for defdts. files petition of appeal from defdts-appellants together with S. C. judgment and Secretary's certificate in appeal forms in blank duly stamped and application for typewritten copies and moves that same be accepted. He also moves that security for costs of appeal be dispensed with, Proctor for pltff. consenting thereto.
 - I. Accept.
 - I. Appeal accepted.
 - 2. Security for costs of appeal, notice of security and notice of appeal dispensed with.
 - 3. Forward record to S.C. in due course.

Intd. E. A. V. de S., D. J.

22. 6. 54.—Decree filed. Call on 25. 6. 54 for scrutiny of decree by Proctor for defendants.

Intd..... D. J. 10

25. 6. 54.—Case called for scrutiny of decree by Proctor for defendant. No. t Journal Entries Mr. Fernando moves for time. 16.8.49 to 13.8.56, For 2/7 Intd..... Continued.

2. 7. 54.-Called for scrutiny of decree by Proctor for defendants. Mr. Fernando states the draft decree is in order. Submit for signature.

Intd.... D. J.

D. J.

6. 7. 54—Final decree entered.

Intd....

10. 7. 54.-Record with two typewritten copies of briefs handed to R. K. for despatch.

Intd....

23. 7. 54.—Typewritten briefs handed to Mr. L. A. Goonewardena, Proctor for Plaintiff Respondent.

Intd....

24. 7. 54.—Typewritten briefs handed to Mr. J. H. Fernando, Proctor for defendants appellants.

Intd....

- 14. 6. 56.—The Registrar S.C. forwards S.C. Judgment as follows :--"It is considered and adjudged that the Decree under appeal be and the same is hereby set aside and the plaintiff's action is dismissed with costs here and below. I. File.
 - 2. Proctors concerned to note.

Intd..... D. J.

30 13. 8. 56.—R.S.C. calls for record and documents as Final Leave to appeal to Privy Council has been allowed. Forward.

Intd..... D. J.

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No. 2

No. 2 Plaint of the Plaintiff 16.8.49

PLAINT OF THE PLAINTIFF

IN THE DISTRICT COURT OF KEGALLA.

No. 6269. Nature : Rei Vindicate Value : Rs. 50,839/-Class Stamps : Rs. 25/50.

MRS. CECILY HARRIET MATILDA PEIRIS presently of 85A, Golahele, Kegalla.....Plaintiff.

Vs.

MRS. CHARLOTTE MARY CLARA FERNANDO of "Credon", 18, Castle Street, Colombo 8......Defendant.

On this 16th day of August, 1949.

The plaint of the plaintiff above-named appearing by her Proctor L. A. Goonewardane of Kegalla states as follows :---

1. The parties to this action reside at the aforementioned places and the lands which are the subject matter of this suit are situated in the District of Kegalla within the jurisdiction of this Court.

2. That the original owners of the lands and premises described in the schedules A and B herein were two people Messrs. T. B. and 20 H. W. Boyagoda.

3. That by Mortgage Bond No. 873 of 31st January, 1920 the said T. B. and H. W. Boyagoda together with one K. D. M. Perera as surety mortgaged and hypothecated to and with O.A.P.R.M.A.R. Palaniappa Chettiar and P.L.S.P.L. Caruppen Chettiar *inter alia* the lands and primises fully set out in the schedules A and B hereto.

4. The aforesaid Palaniappa Chettiar and Caruppen Chettiar put the said Mortgage Bond in suit in case No. 8477 of the District Court of Colombo and obtained decree therefor on the 9th day of May, 1923.

5. Under the decree in the said case No. 8477 the mortgaged 30 premises *inter alia* the lands in the schedules A and B hereto were sold by Public Auction on the 12th July, 1924 and were bought in by the judgment creditors the aforesaid two Chettiars who in confirmation of their title obtained a conveyance from the Secretary of the District Court, Colombo, No. 306 dated 9th February, 1925.

6. That the said Chettiars thereafter by their deed No. 32 of 8th April, 1925 sold and transferred *inter alia* the lands in the schedules A. and B hereto to Messrs, C. W. Peiris, D. J. B. Ferdinando and A. C. de Mel.

As an alternative title the plaintiff pleads :—

No. 2 Plaint of the Plaintiff 16.8.49 —Continued.

7. (a) That after the decree in case No. 8477 referred to in paragraph 5 above the said T. B. and H. W. Boyagoda *inter alia* purported to sell to one D. A. R. Senanayake by deed of sale No. 194 dated 14th June, 1924 the lands and premises in the schedules A and B together with other lands.

(b) The said D. A. R. Senanayake by deed No. 757 dated 1st April, 1925 transferred *inter alia* the lands in the schedules A and B hereto to the aforesaid Messrs. C. W. Peiris, D. J. B. Ferdinando and A. C. de
10 Mel who thereupon became the absolute owners of the said premises.

8. The said C. W. Peiris, D. J. B. Ferdinando and A. C. de Mel by their Deed of Sale No. 34 dated 9th April 1925 and No. 72 dated 22nd March, 1926 sold and conveyed *inter alia* a 175/300 or 7/12 shares of the lands in the schedules A and B hereto to Messrs. A. P. Craib and A. D. Callander.

9. The said C. W. Peiris, D. J. B. Ferdinando and A. C. de Mel by deeds Nos. 780 dated 15th July, 1925 and 1069 dated 5th March, 1930 thereupon declared between themselves the respective proportions in which they held the balance 5/12 shares, namely, the said C. W. Peiris to half of 5/12 or 15/72 shares, the said D. J. B. Ferdinando to one third of 5/12 or 10/72 shares and the said A. C. de Mel to one sixth of 5/12 or 5/72 shares.

10. The said C. W. Peiris by deed No. 1252 of 11th June, 1929 sold and transferred *inter alia* a 125/600 or 15/72 shares of the premises herein to the plaintiff.

11. The said D. J. B. Ferdinando by deed No. 1070 dated 5th May, 1930 sold and conveyed a half share of his holding namely a 5/72 share or 60/864 shares to H. C. Rowbotham now known as H. C. Rodale, C. J. Strachan, J. Strachan, J. G. Allen and P. M. Ondaatje in the following proportions to wit, H. C. Rodale to 40/864 shares and to each of the others a 5/864 shares.

12. The said A. C. de Mel by deed No. 1534 of 28th November, 1932 sold and transferred his 5/72 shares of the premises herein to Messrs. Hull Blyth & Coy. of Colombo who by deed No. 2290 dated 2nd August, 1938 sold and transferred the same to Kathleen de Mel.

13. The said D. J. B. Ferdinando by deed No. 470 dated 4th September, 1939 sold and transferred his remaining 5/72 shares of the said premises to one C. E. Perera of Panadura.

14. The said C. E. Perera by deed No. 521 dated 10th September,
40 1941 sold a one third share of his 5/72 shares to Lakshmi Ferdinando and the said C. E. Perera also by deed No. 591 of 21st July, 1944 sold a further one-sixth share of his 5/72 shares to the said Lakshmi Ferdinando.

No. 2 Plaint of the Plaintiff 16.8.49 —Continued.

15. The said A. P. Craib, A. D. Callander, Kathleen De Mel, H. C. Rodale, P. M. Ondaatje, C. J. Strachan, J. Strachan, J. G. Allen together with the said C. W. Peiris, D. J. B. Ferdinando and A. C. de Mel by their deed of agreement No. 1151 of 2nd and 8th November, 1945 *inter alia* agreed to sell their 52/72 shares of the premises herein to the plaintiff and in pursuance of the said agreement the said eleven people aforementioned by their deed No. 2369 of 25th and 27th September, 1946 sold and transferred the said shares of the said premises to the plaintiff.

16. The said plaintiff thereupon became the absolute owner of 67/72 shares of the premises herein and the said Lakshmi Ferdinando (now Goonewardane) and the said C. E. Perera were the owners of the balance 5/72 shares of *inter alia* the lands in the schedules A. and B herein.

17. That by virtue of a deed of exchange No. 2371 of 25th September, 1946 the said C. E. Perera and Lakshmi Ferdinando now Goonewardane conveyed their 5/72 shares of the premises herein to the plaintiff in return for various divided allotments of other lands which were conveyed to them by the plaintiff.

18. The plaintiff pleads the full benefit of her title by prescription in terms of Section 3 of the Prescription Ordinance No. 22 of 1871.

19. The plaintiff states that the defendant is the owner of the premises called Uduwewela Group or Estate which adjoins Utuankande Estate of which the premises in the schedules A and B form part.

20. The plaintiff further states that an extent of about forty three acres out of the premises deccribed in schedule A herein is planted in tea, which said plantation was made from the year 1926 during the co-ownership of the said A. P. Craib, A. D. Callander, C. W. Peiris, D. J. B. Ferdinando and A. C. de Mel, the plaintiff's predecessors in title.

21. The plaintiff further states that the premises in schedule B were always in jungle or chena and unplanted until the year 1947 when 30 the defendant began planting the same in spite of the protests of the plaintiff.

22. The plaintiff now complains to this Court that the defendant is in the wrongful and unlawful possession of the premises in schedule A ever since her purchase in the year 1946 and of the premises in schedule B from the year 1947 to the plaintiff's loss and damage of Rs. 11,739/- for the last two years, made up as follows :—The plaintiff estimates that a reasonable yield from the said forty three acres of tea would be 390 pounds made tea per acre per annum and the profit per pound would be cents 35.

23. The plaintiff estimates the value of the premises in schedules A and B herein which in the aggregate consists of about eighty acres at Rs. 39,100/-.

Wherefore the plaintiff prays :

- (a) for a declaration of title to the lands and premises fully set out in the schedules A and B herein.
- (b) for damages of Rs. 11,739/- up to date with further damages at Rs. 5,869/- per annum until Plaintiff is restored to possession
- (c) That the defendant be ejected from the said premises and the plaintiff be placed and quieted in possession thereof
- (d) for costs of suit
- (e) for such other and further relief as to this Court seems necessary and reasonable in the premises.

Sgd. L. A. GOONEWARDANE, Proctor for plaintiff. No. 2 Plaint of the Plaintiff

16.8.49

-Continued.

THE SCHEDULE A REFERRED TO ABOVE

1. All that land called Udakeyedeniyehena in extent three pelas of paddy sowing situated at Polwatte in Egoda Patha Pattu of Galboda Korale in the District of Kegalla Sabaragamuwa Province and bounded 20 on the East by the limit of the Hena belonging to Bamunusinghe Mudiyanse people and the limit of Aluboattehena, South by the village limit of Uduwela, West by the limit of Bakmeangehena and Purane belonging to Bamunusinghe Mudiyanse people and North by the limit of the village Panekawegehena and Bamunusinghe Mudiyanselage hena, and registered in C.223/77.

2. All that land called Timbiligahawatte situated at Polwatte aforesaid and bounded on the East by Iura, South by Hena of Ukkubanda, West by Galenda and North by Mala Ela containing in extent two and 30 a half acres, and registered in C.223/78.

3. Undivided 3/24 shares of Medawatte in extent about thirty acres situated at Polwatte aforesaid and bounded on the North by Sidalampadeniye Kumbura, Ela, Heenwellage Kumbura and Agala, East by Kundamagewattewela and Agala, South by Agala and Crown land and west by Yonpalliyetenne Agala, and registered in C.223/81.

4. All that land called Batapandurehena in extent two pelas of paddy sowing situated at Polwatte aforesaid and bounded on the East and South by the limit of Pallewalawwehena, West by the Village limit of Uduwewela and North by the limit of the hena of Dingiri Appuhamy, and registered in C.223/85.

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No. 2 Plaint of the Plaintiff 16.8.49 —Continued. 5. All that land called Gallenamulahena in extent three pelas of paddy sowing situated at Polwatte aforesaid and bounded on the East by Galenda, South by the limit of Iddawalagehena, West by Wela and North by the limit of the Hena of Dingiri Appuhamy and registered in C.223/86.

6. All that land called Dangollehena in extent two pelas of paddy sowing situated at Polwatte aforesaid and bounded on the East by the limit of Iddawalagehena and by Pallewalawwehena, South by Batapandurehena, West by Endaru fence of the garden of Kiri Banda and North by Agala, and registered in C.223/87.

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7. All that land called Tembiligahawatte in extent two pelas and five lahas of paddy sowing situated at Polwatte aforesaid and bounded on the East by the limit of Tembiligahawatte hena of Dingiri Amma, South by Happugahamulahena, West by Galenda and North by the limit of the hena of Dingiri Appuhamy and by fixed stones, and registered in C.223/88.

8. Undivided I/4 share of Palletennehena in extent one amunam of paddy sowing situated at Polwatte aforesaid and bounded on the East by the Agala of the garden belonging to Bamunusinghe Mudiyanselage Appuhamy, South by the village limit of Uduwewela, West by the Agala of the garden belonging to Udawatte Aratchilla and North by the Agala of Danakirigalapalletennehena, and registered in C.225/89.

9. An undivided 1/4 share of Bakmiangehena and purana in extent one amunam of paddy sowing situated at Polwatte aforesaid and bounded on the East by the limit of the Hena belonging to Neelakanthi Mudiyanselage Hendrick Appu, South by the limit of the Hena belonging to the Crown, West by the limit of the field belonging to the said Hendrick Appu and Iura of the field belonging to Danakirigala Vihare and North by the limit of Wavulubuluwehena belonging to Bamunusinghe Mudiyanselage Appuhamy and Punchirala, and registered in C.223/90.

10. Undivided 1/4 share of Yonpalliyehena in extent one amunam of paddy sowing situated at Polwatte aforesaid and bounded on the East by the limit of Narangahamulahena, South by the limit of Wavulubuluwehena, West by the limit of Pallewalawwehena and the limit of Karakehena and on the North by the limit of Bulugahamulahena and Telehetuwa and Endaru fence, and registered in C.223/91.

II. Undivided half share of Ethilimalehena in extent twelve lahas of paddy sowing situated at Polwatte aforesaid and bounded on the North by the limit of Iddawalagehena, East and West by Rubber Estate 40 and South by Batapandurehena of T. B. Boyagoda and registered in C.223/95.

12. All that land called Batapandurehena now Watta in extent five pelas of paddy sowing situated at Polwatte aforesaid and bounded on the East by the limit of Heenwellagehena and Mudunapitagala, South by the limit of Mahawalawwa, West by the limit of Siyambalapitiyahena and the limit of Iddawalagehena and North by stones fixed on the limit of Iddawalagehena, and registered in C.223/98.

13. All that land called Dangahayatamadehena *alias* Batapandurehena situated at Polwatte aforesaid and bounded on the North by the limit of Iddawalagehena and the limit of Heenwellagehena, East by the limit of Heenwellagehena and Galenda, South by the limitary ditch of Tewatte and West by the village limit of Uduwewela and the limit of Siyambalapitiyehena, containing in extent two amunams of paddy sowing and registered in C.223/166.

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14. All that high land and low land called Aradhanaelahena and the adjoining field of the aggregate extent of three pelas of paddy sowing situated at Dodantale in Egodapatha Pattu aforesaid and bounded on the North by Gansabawa Road on the limit of Aradhana Elahena, East by Horanekarayage Kumbura, South by Tewatte Ela and West by the limit of the Hena belonging to Moor people and the village limit of Uduwewela, and registered in C.223/167.

15. All that allotment of land called Imbulange Udugehena alias Dangollehena situated at Uduwewela in Egodapatha Pattu aforesaid and bounded on the South by land claimed by natives and Crown land and on all other sides by land claimed by natives containing in extent One acre One rood and Twenty eight perches (A1.R1.P28) and registered in C.223/168.

16. All that allotment of land called Dangolleminiranwalehena situated at Uduwewela aforesaid and bounded on the North by Polwatte Village boundary, East by Dodantale Village boundary, South by Bandarahena claimed by D. A. David, West by Dangollehena claimed by E. Sethuwa and others and North-west by Ethinimalehena claimed by R. Menika and others containing in extent four acres, two roods and eleven perches (A4.R2.P11) and registered in C.223/169.

17. An undivided half share of Tennepitahena situated at Uduwewela in Egodapatha Pattu aforesaid and bounded on the North by limit of Edirisinpedigehena, East by Walawwehena, South by Hapugaha-dolehena and West by Bandarahena containing in extent three pelas of paddy sowing, and registered in C.223/164.

18. All that land called Taradenitennehena situated at Dodantale in Egodapatha Pattu aforesaid and bounded on the North and West by the limit of Udawalawwehena, East by the limit of Udawalawwehena and South by the limit of Levkewalawwehena containing in extent two amunams of paddy sowing and registered in C.223/163, which said allotments of land numbered I to 14 in the schedule A above are identified and consist more or less of lots 97, 101, 103, 104, 105, 106, 107, 108, 108A, 109, 110, 111 in the Survey Plan of Utuankande Estate No. 1304 made by Messrs. Ben J. Thiedeman & Co., Licensed Surveyors, and now form one property.

No. 2 Plaint of the Plaintiff 16.8.49 --Continued.

THE SCHEDULE B ABOVE REFERRED TO:

No. 2 Plaint of the Plaintiff 16.8.49 -Continued.

I. All that land called Sidaranpadeniye Egodahena in extent six lahas of paddy sowing situated at Polwatte aforesaid and bounded on the East by a straight line from Rawalindala Pandura up to Mahabulu tree of the remaining portion of the same land belonging to Ukku Menika, South by Deniya, West by stones fixed for making the limit of Appurallagehena, and North by the limit of the forest transformed into a Mukalana, and registered in C.223/79.

2. All that land called Bulanehena in extent two pelas of paddy sowing situated at Polwatta aforesaid and bounded on the East by the Endaru fence of Totupoladeniya, South and West by the limit of the hena of Siyambalapitiya Korale and North by Pallewalawwehena, and registered in C.223/80.

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3. Undivided 3/6 shares of Totapoladeniyahena in extent one amunam of paddy sowing situated at Polwatte aforesaid and bounded on the East by the limit of Iddawalagehena, South by Crown land, West by the limit of Ganimehena and North by Daulkarayalagehena and registered in C.223/83.

4. Undivided 3/6 shares of Ganimehena in extent two pelas of paddy sowing situated at Polwatte aforesaid and bounded on the East by the limit of Totapoladeniyehena, South by the limit of the Hena of Dingiri Amma, West by the Village limit of Ambulugala and North by the limit of Mukalana, and registered in C.223/84.

5. An undivided half share of Indigollehena in extent eighteen lahas of paddy sowing situated at Polwatte aforesaid and bounded on the North by the limit of the Hena of Siyambalapitiya Korale, East by Egodawatte Agala and Endaru fence, South by the limit of Udagehena and West by the limit of the Hena of Pallewalawwe, and registered in C.223/02.

6. All that land called Totapoladeniye *alias* Bulanehena in extent 30 about one pela of paddy sowing situated at Polwatte aforesaid and bounded on the North by Ela, East by Totapoladeniya *alias* Ela, South by Siyambalapitiyehena and Nekatigehena and West by Siyambalapitiyahena *alias* Bulanehena, and registered in C.223/96.

7. Undivided half share of Mulanagawa Mukalana in extent one acre two roods and sixteen perches (AI.R2.PI6) situated at Polwatte aforesaid and bounded on the North by Bulane Ela, East by Indigollehena claimed by Banda R.M., South by Bulanehena claimed by Dingirihamy and West by land appearing in Plan No. 67610 and registered in C.223/97.

8. Undivided one third (I/3) share of Pallepitiyekumbura in extent 40 two pelas of paddy sowing situated at Polwatte aforesaid and bounded on the East by the limit of Ukku Banda's Hena, South by Weleweta and limitary posts, West by limitary posts and stone fence and North by limit of Arambedeniya, and registered in C.223/I34.

9. All that land called Sidalampadeniyawatta situated at Polwatta aforesaid and bounded on the North by the limit of Sidalampadeniya belonging to Appusingho, East by the limit of the garden of Appusingho, South by the ditch of Tel-ehetuwamulahena belonging to Bamunusinghe Mudiyanselage people and West by the ditch of Heenwellagehena containing in extent twelve lahas of paddy sowing, and registered in C.223/165.

10. All that land called Bulanehena situated at Ambulugala in Egodapatha Pattu aforesaid and bounded on the North by Mala Ela on the limit of Watteralagehena, East by the village limit of Dehimaduwa, South by the limit of Waharaggodagehena and West by the limit of Gamagehena containing in extent fifteen lahas of paddy sowing, and registered in C.223/234 and C.224/106,

which said allotments of land numbered to I to Io in the schedule B above are identified and consist more or less of lots 89, 90, 90B, 91, 93, 94, 94B, 95, 95A, 96 in the Survey Plan of Utuankande Estate No. 1304 made by Messrs. Ben J. Thiedeman & Co., Licensed Surveyors, and now form one property.

> Sgd. L. A. GOONEWARDANE, Proctor for plaintiff.

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Settled by :

Sgd. WINSTON WICKREMASINGHE Sgd. E. B. WICKREMANAYAKE, K.C.,

Advocates.

No. 3

ANSWER OF THE DEFENDANTS

No. 3 Answer of the Defendants 20.12.49

IN THE DISTRICT COURT OF KEGALLA.

No. 6269.

MRS. CECILY H. M. PEIRIS of Kegalla.....Plaintiff.

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Vs.

CHARLOTTE MARY CLARE MRS. FERNANDO of 18. Street, Colombo......Defendant. Castle

On this 20th day of December, 1949.

The answer of the defendant abovenamed appearing by J. H. Fernando, her Proctor, states as follows :----

1. This defendant and her daughter Rene Perera nee Fernando are in possession of an estate called Uduwewela Estate to which they are lawfully entitled and which comprises of a number of lands title to which this defendant has acquired by a number of deeds from various parties.

No. 2 Plaint of the Plaintiff 16.8.49 -Continued.

No. 3 Answer of the Defendants 20.12.49 --Continued. 2. This defendant is not aware as to which portion of the said estate this defendant and the said Rene Perera are in possession of, that the plaintiff is seeking to indicate title to, in this action and this defendant is unable to identify the lands that plaintiff describes in schedules A and B of the plaint and this defendant therefore moves that plaintiff be asked to, depict the same separately and by name as a plan made after a survey inter parties.

3. This defendant states that Rene Perera aforesaid presently in England who is represented in this dominion by an attorney is a coowner of the said Uduwewala Estate with this defendant and is a necessary party to this suit.

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4. This defendant specially denies that plaintiff has any title to the estate in the possession of this defendant and of Rene Perera or of any portion thereof and this defendant gets plaintiff to the proof of the title set out in the plaint and this defendant avers that if any title did accrue to plaintiff by virtue of the said plans such title does not apply to any portion of Uduwewela Estate in the possession of this defendant and of the said Rene Perera.

5. This defendant specially denies the averments in the paragraphs 16, 17, 18 and 22 of the plaint.

6. This defendant avers that this defendant and the said Rene Perera planted the extent known as Uduwewela Estate not as co-owners with any other persons as claimed by plaintiff in paragraph 20 of the plaint but as full and true owners thereof and in the belief that they were sole owners thereof and that the persons mentioned in paragraph 20 of the plaint were in fact and in truth and in law not co-owners with this defendant and of Rene Perera of the estate known as Uduwewala Estate.

7. This defendant entered into possession of the land now known as Uduwewela Estate about 25 years ago claiming title thereto and in the full knowledge and belief of having title thereto and planted the same and 30 subsequently this defendant conveyed an undivided half share thereof to the said Rene Perera who became entitled thereto and entered into possession thereof and who has also planted a portion thereof.

8. This defendant and Rene Perera have been in the undisturbed and uninterrupted possession of the said Estate by a title adverse to and independent of plaintiff and of all others for a period of over 20 years prior to the alleged grievances complained of in paragraph 22 of the plaint and have acquired prescriptive title thereto.

9. All the plantations on the said estate known as Uduwewala Estate were made by this defendant and the younger plantations by this 40 defendant and the said Rene Perera by virtue of their title and in the *bona fide* belief that they had title **and the said** estate has been very materially enbound in value thereof and the said plantations constitutes an improvement on the said estate in respect of which defendant and her co-owners hence, are entitled to claim compensation in the event of plaintiff having declared entitled to any portion thereof. 10. In the premises this defendant denies that the plaintiff is entitled to claim any damages from this defendant or from Rene Perera.

11. This defendant claims compensation from plaintiff for the improvements on the said Uduwewela Estate at the rate of Rs. 1,500/-per acre and to the *Jus Retentionis* thereof.

12. It is impracticable to set out in this answer the boundaries of the various allotments of lands comprising Uduwewela Estate or to set out their names in detail and this defendant reserves to herself its right to file a full answer with boundaries to the land ascertained to be in dispute after a survey is made.

Wherefore this defendant prays :---

(I) That plaintiff's action be dismissed with costs, and

- (2) For costs, and
- (3) For such other and further relief as to this Court shall seem meet.

Sgd. J. H. FERNANDO, Proctor for defendant.

No. 4

AMENDED PLAINT OF THE PLAINTIFF

No. 4 Amended Plaint of the Plaintiff 13.7.50

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IN THE DISTRICT COURT OF KEGALLA.

No. 6269.

Nature : Rei Vindicatio Value : Rs. 50,839/-Class Stamps : Rs. 25/50.

MRS. CECILY H. M. PEIRIS presently of 66, Campbell Place, Colombo 10.....Plaintiff

Vs.

- I. MRS. CHARLOTTE MARY CLARA FERNANDO of "Credon", 18, Castle Street, Colombo 8.
- 30 2. MRS. REINEE MARY PHYLLIS PERERA, wife of Dr. A. F. S. Perera presently in England by her duly appointed Attorney Mr. E. M. Fernando of Wasala Road, Kotahena, Colombo.....Defendants.

On this thirteenth day of July, 1950.

The amended plaint of the plaintiff abovenamed appearing by her Proctor L. A. Goonewardane of Kegalla states as follows :---

1. The parties to this action reside at the aforementioned places and the lands which are the subject matter of this suit are situated in the District of Kegalla within the jurisdiction of this Court. No. 4 manufad Plaint

No. 3 Answer of the Defendants 20.12.49 —*Continued*, No. 4 Amended Plaint 13.7.50 -Continued.

That the original owners of the lands and premises described 2. of the Plaintiff in the schedules A and B herein were two people Messrs. T. B. and H. W. Boyagoda.

> That by Mortgage Bond No. 873 of 31st January, 1920 the said 3. T. B. and H. W. Boyagoda together with one K. D. M. Perera as surety mortgaged and hypothecated to and with O.A.P.R.M.A.R. Palaniappa Chettiar and P.L.S.P.L. Caruppen Chettiar inter alia the lands. and premises fully set out in the schedules A and B hereto.

The aforesaid Palaniappa Chettiar and Caruppen Chettiar put 4. the said Mortgage Bond in suit in case No. 8477 of the District Court of 10 Colombo and obtained decree therefor on the 9th day of May, 1923.

5. Under the Decree in the said case No. 8477 the mortgaged premises inter alia the lands in the schedules A and B hereto were sold by Public Auction on the 12th July, 1924 and were bought in by the judgment creditors the aforesaid two Chettiars who in confirmation of their title obtained a Conveyance from the Secretary of the District Court, Colombo, No. 306 dated 9th February, 1925.

6. That the said Chettiars thereafter by their deed No. 32 of 8th April, 1925 sold and transferred *inter alia* the lands in the schedules A and B hereto to Messrs. C. W. Peiris, D. J. B. Ferdinando and 20 A. C. de Mel.

As an alternative title the plaintiff pleads :---

That after the decree in case No. 8477 referred to in 7(a)paragraph 5 above the said T. B. and H. W. Boyagoda inter alia purported to sell to one D. A. R. Senanayake by deed of sale No. 194 dated 14th June, 1924 the lands and premises in the schedules A and B together with other lands.

The said D. A. R. Senanayake by deed No. 757 dated 1st (b)April, 1925 transferred inter alia the lands in the schedules A and B 30 hereto to the aforesaid Messrs. C. W. Peiris, D. J. B. Ferdinando and A. C. de Mel who thereupon became the absolute owners of the said premises.

8. The said C. W. Peiris, D. J. B. Ferdinando and A. C. de Mel by their deed of sale No. 34 dated 9th April, 1925 and No. 72 dated 22nd March, 1926 sold and conveyed inter alia a 175/300 or 7/12 shares of the lands in the schedules A and B hereto to Messrs. A. P. Craib and A. D. Callander.

The said C. W. Peiris, D. J. B. Ferdinando and A. C. de Mel by deeds Nos. 780 dated 15th July, 1925 and 1069 dated 5th March, 1930 thereupon declared between themselves the respective proportions in which they held the balance 5/12 shares, namely, the said C. W. Peiris to half of 5/12 or 15/72 shares, the said D. J. B. Ferdinando to one third of 5/12 or 10/72 shares and the said A. C. de Mel to one sixth of 5/12 or 5/72 shares.

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10. The said C. W. Peiris by deed No. 1252 of 11th June, 1929 $\frac{No.4}{Amended Plaint}$ sold and transferred *inter alia* a 125/600 or 15/72 shares of the premises of the Plaintiff herein to the plaintiff.

13.7.50 -Continued.

The said D. J. B. Ferdinando by deed No. 1070 dated 5th May, II. 1030 sold and conveyed a half share of his holding, namely, a 5/72 share or 60/864 shares to H. C. Rowbotham now known as H. C. Rodale, C. J. Strachan, J. Strachan, J. G. Allen and P. M. Ondaatje in the following proportions to wit, H. C. Rodale to 40/864 shares and to each of the others a 5/864 shares.

12. The said A. C. de Mel by deed No. 1534 of 28th November, 1932 sold and transferred his 5/72 shares of the premises herein to Messrs. Hull Blyth & Coy. of Colombo who by deed No. 2290 dated the 2nd August, 1938 sold and transferred the same to Kathleen de Mel.

The said D. J. B. Ferdinando by deed No. 470 dated 4th 13. September, 1939 sold and transferred his remaining 5/72 shares of the said premises to one C. E. Perera of Panadura.

14. The said C. E. Perera by deed No. 521 dated 10th September, 1941 sold a one third share of his 5/72 shares to Lakshmi Ferdinando and the said C. F. Perera also by deed No. 591 of 21st July, 1944 sold a further one sixth share of his 5/72 shares to the said Lakshmi Ferdinando.

15. The said A. P. Craib, A. D. Callander, Kathleen de Mel, H. C. Rodale, P. M. Ondaatje, C. J. Strachan, J. Strachan, J. G. Allen together with the said C. W. Peiris, D. J. B. Ferdinando and A. C. de Mel by their deed of Agreement No. 1151 of 2nd and 8th November, 1945 inter alia agreed to sell their 52/72 shares of the premises herein to the plaintiff and in pursuance of the said agreement the said eleven people aforementioned by their deed No. 2369 of 25th and 27th September, 1946 sold and transferred the said shares of the said premises to the plaintiff.

15. The said Plaintiff thereupon became the absolute owner of 67/72 shares of the premises herein and the said Lakshmi Ferdinando (now Goonewardene) and the said C. E. Perera were the owners of the balance 5/72 shares of inter alia the lands in the schedules A and B herein.

17. That by virtue of a deed of Exchange No. 2371 of 25th September, 1946 the said C. E. Perera and Lakshmi Ferdinando (now Goonewardene) conveyed their 5/72 shares of the premises herein to the plaintiff in return for various divided allotments of other lands which were conveyed to them by the plaintiff.

18. The plaintiff pleads the full benefit of her title by prescription in terms of Section 3 of the Prescription Ordinance No. 22 of 1871.

19. The plaintiff states that the 1st defendant was the owner of the premises called Uduwewela Group or Estate which adjoins Utuwankande Estate of which the premises in the schedules A and B form part.

That the plaintiff has been informed, and as would appear 20. from the answer already filed, that the 1st defendant's daughter Mrs. Reinee Mary Phyllis Perera is now the owner of an undivided one half share of the said premises Uduwewela Group upon an unregistered

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No. 4 Amended Plaint of the Plaintiff 13.7.50 —Continued.

deed of gift No. 1046 dated 9th August, 1936 attested by C. E. P. Jayanayake of Colombo, Notary Public and the said Mrs. Reinee Mary Phyllis Perera being thus a necessary party and being at present in England is made the 2nd defendant herein by her duly appointed Attorney.

21. The plaintiff further states that an extent of about forty three acres out of the premises described in schedule A herein is planted in tea, which said plantations was made from the year 1929 during the coownership of the said A. P. Craib, A. D. Callander, C. W. Peiris, D. J. B. Ferdinando and A. C. de Mel, the plaintiff's predecessors in title.

22. The plaintiff further states that the premises in schedule B were always in jungle or chena and unplanted until the year 1947 when the defendant began planting the same in spite of the protests of the plaintiff.

23. The plaintiff now complains to this Court that the defendants are in the wrongful and unlawful possession of the premises in schedule A ever since her purchase in the year 1946 and of the premises in schedule B from the year 1947 to the plaintiff's loss and damage of Rs. 11,739/- for the last two years, made up as follows :—The plaintiff estimates that a reasonable yield from the said forty three acres of tea would be 390 lbs. made Tea per acre per annum and the profit per pound would be cents 35.

24. The plaintiff has now discovered that the defendants, particularly the 1st defendant, have committed a series of frauds by suppressing certain important and material facts and by falsely representing to certain Government Officials, such as, the Assistant Government Agent, Kegalla, the Land Settlement Officers and the Tea Control Department that the lands in schedules A and B hereto were owned by the 1st defendant by producing certain fictitious survey plans and by making wrongful and illegal use of them to the serious damage and detriment of the plaintiff.

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25. The plaintiff estimates the value of the premises in the schedules A and B herein which in the aggregate consists about eighty acres at Rs. 39,100/-.

Wherefore the plaintiff prays :----

(a) for a declaration of title to the lands and premises fully set out in the schedules A and B herein.

(b) for damages of Rs. 11,739/- up to date with further damages at Rs. 5,869/- per annum until plaintiff is restored to possession of the said premises.

(c) that the defendants be ejected from the said premises and the 40 plaintiff be placed and quieted in possession thereof.

(d) for costs of suit.

(e) for such other and further relief as to this Court seems necessary and reasonable in the premises.

Proctor for plaintiff.

(Schedules A and B are not printed as they are identically the same as the Schedules A and B appearing on pages 19 to 23)

No. 5

OBJECTIONS OF THE 1st DEFENDANT

No. 5 Objectionsofthe 1st Defendant 31.7.50

IN THE DISTRICT COURT OF KEGALLA.

No. 6269.

MRS. CECILY H. M. PEIRIS of Kegalla......Plaintiff.

Vs.

MRS. CHARLOTTE M. CLARA FERNANDO of Castle Street, Colombo......Defendant.

On this 31st day of July, 1950.

I. The 1st defendant states that the plaintiff has filed an amended plaint dated 13.7.50 to which this defendant has not yet had an opportunity of filing an amended answer.

2. This defendant has no objection to the evidence of plaintiff being recorded *de bene esse*.

This defendant objects to the evidence of the plaintiff's husband being recorded as requested by plaintiff in paragraph 11 of the affidavit in as much as (a) plaintiff's husband as such is not a competent person to give evidence in this case (b) summons has not yet been issued or served on the 2nd defendant who has been made a defendant as recently as 13th July, 1950 (c) 1st defendant has not yet had an opportunity of filing an amended answer as she desired to do after perusal of the survey plans filed or to answer to the amended plaint in which for the first time allegations of fraud are made.

(d) Plaintiff's husband is also a predecessor in title of plaintiff and the affidavit of plaintiff suggests that the husband is competent to and desires to give material evidence on title and possession for a number of years and this defendant is unable within the limited time available to get material to cross-examine him and also to get facts to disprove the allegations of fraud made for the first time in the amended plaint.

(e) This defendant states that a co-owner with this defendant is the 2nd defendant who is aware of material facts and who is away in England with her husband who is also a Doctor on a Government Scholarship and who would in the normal course have been available at the trial and whose information this defendant would have relied on to crossexamine the plaintiff's husband and this defendant cannot within the limited time available get the 2nd defendant down to Ceylon for the purpose.

No. 5 Objectionsofthe 31.7.50 -Continued.

(f) It is not absolutely necessary that the plaintiff's husband should Ist Defendant leave the Island at this stage.

> (g) The matters stated in the affidavit provide insufficient reasons for the recording of evidence de bene esse.

> (h) For the foregoing and other reasons much prejudice would be caused to this defendant if the evidence of plaintiff's evidence were recorded as applied for and this defendant asked to cross-examine him.

> (i) No opportunity is available to 2nd defendant to cross-examine plaintiff's husband and the evidence of plaintiff's husband against the and defendant would be valueless.

Wherefore the defendant prays that the application for the recording of the evidence of plaintiff's husband be disallowed, and For costs and for such other and further relief as to this Court shall seem meet.

Sgd. J. H. FERNANDO,

Proctor for 1st defendant.

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No. 6 Amended Answer of the 1st Defendant and the Answer of the 2nd Defendant 21.11.50

No. 6

AMENDED ANSWER OF THE 1st DEFENDANT AND THE ANSWER OF THE 2nd DEFENDANT

IN THE DISTRICT COURT OF KEGALLA.

No. 6269.

MRS. CECILY H. M. PEIRIS of Kegalla......Plaintiff.

Vs.

C. FERNANDO of Colombo and MRS. CHARLOTTE M. T. others......Defendants.

On this 21st day of November, 1950.

The amended answer of the 1st defendant and the answer of the and defendant appearing by James Herbert Fernando their Proctor state as follows :----

30 **1**. These defendants admit the averments in para. **1** of the amended plaint and deny all and singular the averments in the remaining paras. save such as may hereinafter be admitted.

2. These defendants put plaintiff to the proof of the averments in paras. 1-17, 21-25 of the amended plaint.

3. In as much as plaintiff has not pleaded in reference to Plans Nos. 1077, 1078 and 1079 made by the Commissioner appointed by this Answer of the Court and filed of record in this case these defendants are unable to ist Defendant file a full answer to the amended plaint and these defendants pray that Answer of the plaintiff has asked to amend her pleadings by identifying the lands and Defendant claimed by plaintiff in the amended plaint with reference to the said -Continued. plans.

No. 6 Amended

4. These defendants in answer to para. 18 of the amended plaint deny that plaintiff is entitled to a title by prescription in terms of section 3 of the Ordinance No. 22 of 1871 in respect of any of the lands depicted 10 in the said Plans.

5. These defendants in answer to paras. 21 and 22 of the amended plaint avers that the entireties of the lands surveyed by the Commissioner appointed by Court and depicted in plans Nos. 1077, 1078 and 1079 excepting lot B in plan No. 1079 have been planted in tea by these defendants and these defendants have been in the possession of the entireties of the lands depicted in the said Plans ut dominus for a period of about 20 years prior to this action by a title adverse to and independent of plaintiff and of all others and not in the capacity of a co-owner and **20** these defendants deny that the possession of these defendants was at any time wrongful or unlawful.

6. These defendants in answer to para. 24 of the amended plaint specially deny the averments made therein.

7. These defendants deny that plaintiff has any right or title to the said lands depicted in the said plans or any right to the possession of the plantations thereon and these defendants deny that plaintiff is entitled to possession thereof or to recover any damages from defendants in respect of defendants' possession thereof.

8. Further answering these defendants ask plaintiff to prove that 30 the plans filed of record depict the lands described in these schedules attached to the amended plaint if such be plaintiff's case.

9. These defendants aver that some of the lands claimed by plaintiff have not been surveyed and depicted in any of the plans Nos. 1077, 1078 and 1079.

10. These defendants specially deny that the land called Dangolle Miniranwalehena described as land No. 16 in schedule A of the plaint has been depicted in the Plans filed of record by the commissioner.

11. Answering to para. 20 of the amended plaint these defendants admit that the 1st defendant by deed No. 1046 dated 9.8.36 gifted a half share of certain lands owned by 1st defendant to 2nd defendant and the 40 2nd defendant now claims the same and is in possession thereof.

12. The Crown was at all material times the owner of and was seized and possessed of the lands depicted in Plan No. 1078 filed of record.

No. 6 Amended 1st Defendant 2nd Defendant 21.11.50 -Continued.

13. By grant dated 7th August, 1930 to which is attached title Answer of the plans Nos. 405308, 405309, 405310 and 405311 the Crown sold, conveyed granted and assigned the lands depicted in Plan No. 1078 to 1st defendant and the Answer of the who therefore became entitled thereto, entered into possession of the entirety of the corpus depicted therein, planted the same in tea and other plantations, improved the same and the defendants are and continue to be in possession thereof.

> 14. By way of an alternative title to the land called Aradana Elahena which falls within Plan No. 1078 and which is also depicted in plan No. 1964 dated 11.3.32 made by K. B. Nugapitiya, Surveyor, and filed of record in D. C. Kegalla case No. 9555, these defendants plead

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and the second second

(a) that one Erewpola Lokukumarihamy was at one time the owner thereof.

(b) That the said Lokukumarihamy conveyed the same to H. W. Molligoda on deed No. 2036 dated 23.10.1882 and the said Molligoda by deed No. 30369 dated 23.11.1898 conveyed the same to one Punchibanda who by his deed No. 3073 dated 28.8.02 conveyed the same to one Mohammadu Idurus Lebbe who became entitled thereto.

(c) The said Mohammadu Idurus Lebbe died leaving as heirs his sons Abdul Jabar Idurus and Mohammadu Abdul Cader the two of whom by deeds Nos. 32581 of 28.8.28 and 654 of 23.8.34 conveyed the same to one C. M. M. Ismail Marikkar who by deeds Nos. 32584 dated 28.8.28 and 655 dated 23.8.34 conveyed the same to the 1st defendant who became entitled thereto.

(d) The rights of 1st defendant to the said land were recognised and decreed in D. C. Kegalla case No. 9555.

These defendants are in possession of a divided allotment of 15. land called Dangollehenyaya depicted in plan No. 3775 as lots A1-A6 by virtue of Final Partition Decree in D. C. Kegalla case No. 9230.

16. These defendants admit that Plan No. 1077 filed of record 30 depicts the land called Taradenitennehena situated in the Village of Dodantale and bounded on the North by Maha Walawwehena, East by Leukehene Mala Ela, South by Galenda and West by Karatugaha and Galenda.

17. (a) The owner at one time of the said Taradenitennehena was one Galbokke Somananda Thero who became entitled thereto by virtue of deed No. 3403 of 10.2.88 and No. 2747 of 19.7.98.

(b) The aforesaid Somananda by deed No. 7729 of 16.7.1918 conveyed the same to one D. R. D. Dingiribanda and A. J. S. Wijeratne Banda who became entitled thereto and of whom the said Dingiribanda 40 conveyed his rights to the said Wijeratne Banda on deed No. 8486 of 24.2.19.

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(c) The aforesaid Wijeratne Banda by his deed No. 4321 of 14.12.20 conveyed his rights to one T. B. Boyagoda who by deed No. 754 of 1.4.25 conveyed the same to one D. A. R. Senanayake, who by deed No. 755 of 1.4.25 conveyed to T. C. W. Peiris, K. D. J. J. Ferdinando and V. A. C. de Mel all of whom by deed No. 758 dated 1.4.25 conveyed to C. Batuwantudawe who became entitled thereto.

No. 6 Amended Answer of the 1st Defendant and the Answer of the 2nd Defendant 21.11.50 --Continued.

(d) The said Batuwantudawa together with the aforesaid Peiris, Ferdinando and De Mel by deed No. 776 dated 19th June, and 15th July, 1925, conveyed the same to one F. R. Senanayake who died some years ago leaving a Last Will which was admitted by Probate at the instance of his executor D. S. Senanayake.

(c) The said D. S. Senanayake as executor of the Last Will of F. R. Senanayake by deed No. 338 dated 12.6.26 conveyed the said land to H. W. Boyagoda, who by deed No. 339 of 2.7.26 conveyed to D. A. R. Senanayake who together with H. W. Boyagoda aforesaid by deed No. 1065 dated 18.1.28 conveyed the same to 1st defendant who became entitled thereto, entered into possession thereof and planted and improved the same.

18. These defendants plead that a portion of the land in Plan
20 No. 1078 is covered by T. P. No. 312359 with Crown Grant issued in respect thereof to one K. Sendiya of Uduwewala who has become entitled thereto but these defendants have been in the undisturbed and uninterrupted possession of the said corpus covered by T.P.312359 for a period of over ten years prior to this action by a title adverse to and independent of all others and have acquired a prescriptive title thereto.

19. (a) The 1st defendant admits being in possession of the lands depicted in Plan No. 1079 filed of record and these defendants plead that the said plans is comprised of the lands called Sidarampadeniya, Egodahena, Bulanehena, Thotapoladeniya, Ganimehena and Bulanagawa
30 Mukalana all of which are the property of the 1st defendant.

(b) The 1st defendant claims the land called Sidarampadeniya Egodahena in extent 6 lahas bounded on the North, South, East and West by lands claimed by villagers and of the extent of 1 acre 3 roods and 12 perches and situated at Polwatta by virtue of deeds Nos. 4350 of 20.8.39 and 4212 of 23.6.39 attested by Notary M. V. P. Dharmaratne.

(c) By right of inheritance from their mother one Samarakoon Mudiyanselage Tikiribanda and Samarakoon Mudiyanselage Dingiri Banda were entitled to a half share thereof and they by deed No. 3251 of 29.11.35 sold the same to one K. M. Abeyratne Banda who by deed No. 4350 of 20.8.29 sold to 1st defendant.

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(d) By right of inheritance from their mother one Senanayake Ganihi Mudiyanselage Punchinilame and his brother S. G. M. Kiribanda were entitled to the balance half share and they by deed No. 4212 dated 23.6.39 conveyed to 1st defendant who thereupon became entitled to the entirety of the said land. No. 6 Amended Answer of the 1st Defendant and the Answer of the 21.11.50 —Continued.

(c) The said land called Bulanehena of 2 pelas situated in the Village of Polwatta was at one time the property of Polwatte Hennekgedara Mutumenika by inheritance from her mother Ukkumenika and the said Mutumenika by deed No. 4717 of 12.1.40 attested by N. V. P. Dharmaratne, N. P. conveyed the same to 1st defendant who became entitled thereto and the said land is bounded on the North by Medawattage Appugehena, East by Pallewellawehena, South and West by the village limit of Ambulugala.

(f) The land called Totapoladeniya was the property of one Samarakoon Mudiyanselage Tikiribanda and his brother Dingiribanda 10 each to a 1/4 share and S. G. M. Punchinilame and S. G. M. Kiribanda each to a 1/4 share.

(g) The said Tikiribanda and Dingiribanda by their deed No. 28235 of 9.2.26 sold a half share to one A. H. M. Punchibanda who by deed No. 3251 of 29.11.35 sold to K. M. Abeyratne Banda who by deed No. 4350 of 19.8.39 sold to 1st defendant.

(h) The said Punchinilame and Kiribanda by deed No. 4212 dated 23.6.39 conveyed to 1st defendant who thereupon became entitled to the entire land which is situated at Polwatta and is bounded as described in schedule B of the plaint for land No. 3 therein.

(i) The owner of the land called Ganimehena situated in Polwatta and bounded as described in schedule B to the plaint for land No. 4 was at one time Samarakoon Mudiyanselage Punchimenika who by deed No. 378 of 1857 attested by Porolis Jayasekera, Notary conveyed the same to Dingirimahatmaya and Punchimahatmaya of whom Dingirimahatmaya died leaving two children S. M. Tikiribanda and S. M. Dingiribanda who by deed No. 28235 of 9.2.26 sold to A. H. M. Punchibanda who by deed No. 3251 of 29.11.35 sold to K. M. Abeyratne Banda, who on deed No. 4350 of 19.8.39 sold to 1st defendant. The said Punchimahatmaya died leaving two children S. G. M. Kiribanda who by deed No. 4212 of 23.6.39 sold their 1/2 share to 1st defendant who became entitled thereto.

20. These defendants plead that the deeds relied on by the defendants are duly registered and these defendants plead that the deeds relied on by the defendants obtain priority over the deeds relied on by plaintiff by virtue of due and prior registration.

21. These defendants and their predecessors in title have been in the undisturbed and uninterrupted possession of the lands depicted in plans Nos. 1077, 1078, and 1079 for a period of over ten years prior to this action by a title adverse to and independent of plaintiff and of all others and have acquired a prescriptive title thereto.

22. All the plantations on the lands depicted in the said Plans Nos. 1077, 1078 and 1079 have been made by these defendants by virtue of the title in the belief held *bona fide* that these defendants had title to

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the same and the said lands have been very materially enhanced in value thereby and the said plantation constitutes an improvement on the said Answer of the lands in respect of which these defendants are entitled to compensation 1st Defendant in the event of plaintiff being declared entitled to any portion thereof and Answer of the and Defendant to the *jus retentionis* till such compensation is paid.

23. These defendants claim compensation from plaintiff at the rate of Rs. 1,500 00 per acre in the event of the plaintiff being held entitled to any portion of the said lands and in the event of the plaintiff being declared entitled to any share thereof as co-owner these defendants claim 10 to be entitled to the possession of the said plantations till such time as a

partition action is instituted and divided allotments decreed to plaintiff.

Wherefore the defendants pray that plaintiff's action be dismissed with costs, or in the alternative that these defendants be declared entitled to the plantations, to compensation therefor and to the jus retentionis thereof, and for costs of suit and for such other and further relief as to this Court shall seem meet.

> Sgd. J. H. FERNANDO, Proctor for defendants.

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No. 7

AFFIDAVIT OF THE PLAINTIFF

No. 7 Affidavit of the Plaintiff 1.7.51

THE DISTRICT COURT OF KEGALLA. IN

No. 6269.

MRS. CECILY H. M. PEIRIS presently of 66, Campbell Place,

Vs.

I. MRS. CHARLOTTE MARY CLARA FERNANDO of "Credon", 18, Castle Street, Colombo 8.

2. MRS. REINEE MARY PHYLLIS PERERA wife of Dr. A. F. S. Perera, "Credon ", 18, Castle Street, Colombo......Defendants.

I, Cecily H. M. Peiris being a Christian do hereby make oath and state as follows :----

I. I am the deponent abovenamed and the plaintiff in the above case.

2. That the above action is for declaration of title to a number of allotments of land for which plans have at various times been made.

3. In continuation of my affidavit sworn on the 20th day of June 1950 and filed of record in this case and for the same reasons as specified therein, in addition to the Plans Nos. 1340 and 1443 referred to therein, I move that the Court do allow a notice to issue on the defendants as well

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No. 6

Amended

and the

No. 7 Affidavit of the Plaintiff 1.7.51 —Continued. as on their Proctor to produce in addition Plans Nos. 1342 and 1444 both made by L. E. Markus of Kegalle (Licensed Surveyor now deceased) for the same purpose of superimposing on the plans filed of record.

Signed and sworn to on this 1st day of July 1951.

Before me Sgd...J.P.

No. 8 Affidavit of the 1st Defendant 15.7.51

No. 8

AFFIDAVIT OF THE 1st DEFENDANT

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Deponent.

IN THE DISTRICT COURT OF KEGALLA.

No. 6269.

This 15th day of July 1951.

I, Charlotte Mary Clara Fernando of No. 18, Castle Street, Colombo make oath and say as follows :—

I. I am the 1st defendant in the above numbered action.

2. I have been noticed to produce plans Nos. 1340, 1342, 1443 and 1444.

3. These plans refer only to the title of myself and second defendant.

4. The attorney of 2nd defendant had produced plan No. 1342 20 before the Commissioner appointed by this Court for identification and superimposition and the Commissioner who is a witness for plaintiff has reported to Court in regard to the identification and superimposition effected by him.

5. The plaintiff on the 20th day of June 1950 made an application for the production of plans Nos. 1340 and 1443.

6. The present application is belated and is calculated to cause prejudice and annoyance to me.

7. I have not referred to any of the plans in my pleadings or affidavit filed in this case.

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8. All my plans and other documents are with my senior Counsel Mr. N. E. Weerasooriya, $\kappa.c.$ who is at this date preparing my case for presentation in court at the trial date which is the 19th instant and it would cause me prejudice if any of my said documents are now removed to Court.

9. I am advised by my legal advisers that I am entitled legally to object to the production of these plans and I do so object in their production.

Sgd. C. M. C. FERNANDO.

Sgd. C. H. M. PEIRIS,

Sworn before me at Colombo this 15th day of July 1951.

Sgd.....J.P.

No. 9

AFFIDAVIT OF THE 2nd DEFENDANT

No. 9 Affidavit of the 2nd Defendant 15.7.51

IN THE DISTRICT COURT OF KEGALLA.

No. 6269.

This 15th day of July 1951.

I, Reine Mary Phyllis Perera wife of Dr. A. F. S. Perera of No. 18, Castle Street, Colombo make oath and say.

I. I am the 2nd defendant in the above numbered action.

2. I have been noticed to produce plans Nos. 1340, 1342, 1443 10 and 1444.

3. These plans refer only to the title of myself and 1st defendant.

4. My attorney had produced Plan No. 1342 before the Commissioner appointed by this Court for identification and superimposition and the Commissioner who is a witness for plaintiff has reported to Court in regard to the identification and superimposition effected by him.

5. The plaintiff on the 20th day of June 1950 made an application for the production of plan Nos. 1340 and 1443 but the said application was not proceeded with.

6. The present application is belated and is calculated to cause 20 prejudice and annoyance to me.

7. I have not referred to any of the plans in any pleadings or affidavit filed in this case.

8. All my plans and other documents are with my senior Counsel Mr. N. E. Weerasooriya, K.C. who is at this date preparing my case for presentation in Court at the trial date which is the roth instant and it would cause me prejudice if any of my said documents are now removed to Court.

9. I am advised by my legal advisers that I am entitled legally to object to the production of these plans and I do so object in their 30 production.

Sgd. E. PERERA.

Sworn before me at Colombo on this 15th day of July 1951.

Sgd....J.P.

No. 10

No. 10 Statement of Objections of the Defendants 16.7.51

STATEMENT OF OBJECTIONS OF THE DEFENDANTS

IN THE DISTRICT COURT OF KEGALLA.

No. 6269.

Vs.

I. MRS. C. M. C. FERNANDO

On this 16th day of July, 1951.

The statement of objections of the defendants abovenamed appearing 10 by James Herbert Fernando, their Proctor, to the application made by the plaintiff in this case for the production in Court of Plans Nos. 1340, 1342, 1443 and 1444 made by L. E. Markus states as follows :---

I. The application made and the notices that issued on these defendants in pursuance thereof are not such as are contemplated by the Civil Procedure Code.

2. The defendants deny that plaintiff has a right in law to compel defendants to produce plans to enable the same to be superimposed on the plans filed of record as is claimed in the affidavit of plaintiff dated 1st July, 1951.

3. The defendants object to the production of the said plans on the ground that the purpose for which they are called for is not one the law contemplates.

4. By way of further objections these defendants state-

(a) That the application is belated and notices were served as aforesaid on defendants as late as the 8th day of July, 1951.

(b) That an application was made by affidavit dated 20th June, 1950 for the production of Plans Nos. 1340 and 1443 and the same was not pursued.

(c) In paragraph 7 of the amended answer of these defendants dated 30 November, 1950 and in paragraph 2 of the earlier answer dated December, 1949 these defendants took the pleas that the corpus claimed by the plaintiff had not been identified.

(d) All documents relied on by these defendants including all Plans are now with defendants' Senior Counsel Mr. N. E. Weerasuriya, K.C. who is engaged in the preparation of defendants' case for presentation on the 19th instant and defendants will be seriously prejudiced and inconvenienced if plaintiff's application is allowed.

(e) Plan No. 13.42 was submitted by 2nd defendant's attorney to the Commissioner appointed by Court and the same has been superimposed and identified with the corpus depicted in Plan No. 1077 filed of record.

5. These defendants state that if the application of the plaintiff is to be construed as one for the inspection of the said plans and to permit plaintiff to take copies thereof for superimposition by a Surveyor or otherwise these defendants take the following objections to the same.

(a) The plans relate only to defendats' title.

(b) In such an application as may be made by plaintiff, defendants
10 have the right within ten days of the receipt of the notice to deliver to plaintiff a notice stating a time within 3 days from such delivery at which the documents may be inspected at their Proctor's office and to state which documents defendants object to produce and in as much as a peremptory notice has been served on these defendants to produce the said Plans on the 16th instant, these defendants state that the said notice is bad in law.

Wherefore these defendants pray that the **application of** the plaintiff on these defendants for the production of the said Plans be dismissed, and

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For costs and for such other and further relief as to this Court shall seem meet.

Sgd. J. H. FERNANDO, Proctor for defendants.

No. 11

ISSUES FRAMED

D.C. 6269

- MR. ADV. CYRIL E. S. PERERA with MR. ADV. W. WICKREMA-SINGHE and MR. ADV. A. H. E. MOLAMURE instructed for plaintiff.
- 30 MR. ADV. N. E. WEERASOORIYA, K.C. with MR. ADV. C. R. GUNARATNE, MR. ADV. R. F. PERERA and MR. ADV. R. S. WANASUNDERA instructed for defendants.

Counsel for the plaintiff states that in as much as the trial of the case is proceeding he does not press to the application to have the defendants produce certain documents in Court.

Issues

By Mr. C. E. S. Perera :---

- (1) Were T. B. and H. W. Boyagoda, at one time, the owners of the lands in schedules A and B of the amended plaint?
- (2) Has the title to the said lands on the deeds pleaded in the amended plaint devolved on the plaintiff?

No. 11 Issues Framed 19.7.51

19.7.51.

No. 10 Statement of Objections of the Defendants 16.7.51 —Continued.

No. 11 Issues Framed 19.7.51 —Continued.

- (3) Prescriptive rights of parties.
- (4) Were the lands in schedule A planted and improved by the plaintiff's predecessors in title ?
- (5) Were the lands in schedule B unplanted at the date of the plaintiff's purchase?
- (6) Have the defendants encroached on the lands in schedules A and B, in extent 43 acres, ever since the purchase in 1946 by plaintiff?
- (7) What damages if any is plaintiff entitled to?
- (8) Have the defendants, and particularly the 1st defendant, committed a series of frauds :
 - (a) by suppressing important and material facts from Government Officials in order to prove that the lands in schedules A and B belonged to the 1st defendant.
 - (b) by producing certain fictitious survey plans which had no application and making wrongful and illegal use of them and thereby cause damage and detriment to the plaintiff?
- (9) Do the plans filed of record depict the lands described in schedules A and B to the amended plaint?
- (10) Was the Crown at all material times the owner of the lands depicted in plan No. 1078?
- (11) Did the Crown by Grant dated 27th August, 1930 sell, convey grant and assign the said lands to the 1st defendant?
- (12) Did the 1st defendant plant the same in tea and other plantations and improve the same ?
- (13) Are the defendants entitled to the entirety of the lands shown in plan No. 1077 on the deeds pleaded by them in their answer?
- (14) Does the title pleaded by the defendants in paragraphs 19 and 25 of the amended answer apply to any of the lands in schedule B of the plaint ?
- (15) Does the title pleaded by the defendants in paragraph 19 and 25 30 of the amended answer apply to the lands depicted in plan No. 1079 ?
- (16) Can the defendants rely on the decree in D.C. Kegalla case No. 9555 as against the plaintiff ?
- (17) Does Dangollehenyaya referred to in paragraph 15 of the amended answer fall within any of the plans Nos. 1077, 1078 or 1079 made for the purpose of this case ?

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By MR. WEERASOORIYA :---

- No. 11 Issues Framed (18) Have the plantations and improvements on the lands depicted in the plans filed of record been made by defendants in the bona fide belief that they were the owners of the lands?
- (10) (a) If so, what compensation are the defendants entitled to?
 - (b) Are the defendants entitled to a *jus retentionis* until such compensation is paid?
- (20) Does the title of the defendants to the lands in question gain priority over the title, if any, of the plaintiff by virtue of due and
- prior registration of the deeds in favour of the defendants? I accept the issues.

Intd. N. S., D. J., 19.7.51.

No. 12

PLAINTIFF'S EVIDENCE

Plaintiff's case : Mr. C. E. S. Perera calls :

C. CHARLES WILFRED PEIRIS, sworn, 56 years, landed proprietor, Colombo: I am the husband of the plaintiff. The one time owners of the lands in schedules A and B were T. B. Boyagoda and 20 H. W. Boyagoda, who mortgaged them by bond No. 873 of 31st January, 1920, which is recited in deed No. 306 of the 9th February, 1925, which I produce marked (PI). That bond was put in suit in D. C. Colombo case No. 8477 and decree was entered on the 9th May, 1923. The sale took place on 12th July, 1924, and the conveyance P1 was to Palaniappa Chettiar and Caruppen Chettiar who were the mortgagees. Palaniappa and Caruppen Chettiars by deed No. 32 of 8th April, 1925 (P2) transferred the entirety of those lands to myself, (C. Charles Wilfred Peiris), D. J. B. Ferdinando and A. C. de Mel. The lands which I claim in schedule A of the amended plaint excepting lands Nos. 18 and 3 which are not 30 surveyed are depicted in plan No. 1078 marked (X). Land No. 18 in schedule A to the plaint is depicted in plan No. 1077 filed of record marked (Y). The lands in schedule B of the amended plaint except lands Nos. 1 and 8 are depicted in plan No. 1079 marked (Z) filed of record.

I stated that all those lands were transferred to me and two others.

Before the sale in the mortgage bond action T. B. Boyagoda and H. W. Boyagoda by deed No. 194 of 14th June, 1924 (P3) transferred those lands to D. A. R. Senanayake. On deed No. 757 of 1st April, 1925 (P4) myself and the other two vendees got a transfer of the lands from Senanayake. I and the two other owners by deed No. 72 of 22nd March, 1926 (P5) transferred 175/300 shares to A. P. Craib and A. D. Callander.

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No. 12 Plaintiff's Evidence C. W. Peiris Examination

19.7.51 --- Continued.

No. 12 Plaintiff's Evidence C. W. Peiris Examination —*Continued*. I and the two other owners had by deed No. 780 of 15th July, 1925 (P6) declared the shares as among ourselves of the balance 125/300 shares. Before P6 I had executed another deed on 9th April, 1925, No. 34 in favour of A. D. Callander and A. P. Craib also 175/300 shares of this estate but that deed does not relate to any of the lands in this case. It is after the execution of that deed, No. 34 in 1925, that I executed P6 in July, 1925, declaring myself entitled to 125/300 shares. I was entitled to a half of 125/300 shares, Ferdinando to 1/3 and De Mel to 1/6. My shares came to 15/72, Ferdinando's 10/72 and De Mel's 5/72.

By deed No. 1252 of 11th November, 1929 (P7) I transferred my 10 shares to my wife, the plaintiff in this case, but I have looked after the lands on her behalf, and done everything connected to the estate. Ferdinando by deed No. 1070 of 5th May, 1930 (P8) transferred a half of 10/72 to H. C. Rowbotham also known as M. C. Rodale now, C. J. Strachan, J. Strachan, J. G. Allen and P. M. Ondaatje. Ferdinando by deed No. 470 of 4th September, 1939 marked (P9) transferred his shares to C. E. Perera. C. E. Perera transferred a 1/3 of 5/72 by deed No. 521 of 10th September, 1941 (P10) to Lakshmi Fernando now Gunawardena, and he also by deed No. 591 of 21st July, 1944 marked PII transferred a further 1/6 of 5/72 shares to the same vendee. A. C. de 20 Mel by deed No. 1534 of 28th November, 1932 (P12) transferred his interest to Hull Blythe & Co., who by deed No. 2290 of 2nd August, 1938 (P13) transferred the said share to Kathleen de Mel.

A. P. Craib and the ten others referred to in paragraph 15 of the amended plaint entered into an agreement, No. 1151 of 2/8 November, 1945 (P14) to sell the entirety of their interest (52/72) shares to the plaintiff. They by deed No. 2369 of 25/26 Septr., 1946 (P15) conveyed the said shares (52/72) to the plaintiff. The plaintiff was herself the owner of 15/72 shares on deed P7. The outstanding 5/72 shares she got on a deed of exchange, No. 2371 of 25th Septr., 1946 (P16) from C. E. Perera and Lakshimi Ferdinando. The plaintiff is now entitled to the entirety of the lands.

The lands referred to in those deeds comprise the entirety of the Kempitikanda Group comprising three divisions : Vatimahana, Ambulugala and Moderatenna.

(At this stage Mr. Weerasooriya raises the following issues :---)

- (21) Did T. B. Boyagoda and H. W. Boyagoda mortgage the lands in schedules A and B of the amended plaint to Palaniappa and Caruppen Chettiars ?
- (22) Did Palaniappa and Caruppen Chettiars put the said bond in 40 suit in case No. 8477, D. C. Colombo and obtain a decree therein ?
- (23) Were the said lands in schedules A and B of the amended plaint sold in pursuance of the said decree and purchased by the said Palaniappa and Caruppen Chettiars?

(2.4) Does the title of Palaniappa and Caruppen Chettiars pleaded in the plaint, namely in deed No. 306 of 1925 pass title to the plaintiff of the lands in the schedules to the amended plaint ?

No. 12 Plaintiff's Evidence C. W. Peiris Examination —Continued.

I accept the issues. Adjourned for lunch at 12-30 p.m.

Trial resumed at 2-00 p.m.

C. CHARLES WILFRED PEIRIS, recalled, sworn,

XD. CONTINUED :— The plaintiff claims title to the entirety of the lands. The plantations are as follows :—

On KEMPITIKANDA ESTATE—217 acres rubber.

YATIMAHANA ESTATE :--- 151 acres tea and 21 acres rubber.

AMBULUGALA ESTATE :---150 acres of tea.

Kempitikanda and Yatimahana are in Beddewala on the Mawanella-Rambukkana Road. All the lands I claimin schedules A and B are in the Ambulugala division of Kempitikanda Group. It is also known as Utuwankanda Estate.

Soon after my purchase in 1925 I got a plan made. I have in Court the original of plan No. 1304 but I am producing a certified copy of it marked P17. Plan P17 bears no date. The lands were surveyed in 1925 and 1926. The subsequent amendments made to this plan (P17)
20 have been dated in 1928 and 1929. I know the lands in schedules A and B of the amended plaint and that they form part of Ambulugala division. The survey plan P17 contains all the lands in schedules A and B excepting land No. A18. Land No. 18 is in another part of Dodantale Village.

At the time of the survey Craib and Callander were the co-owners of the land. It was planted in tea in 1927. The lands in schedule A, 1-17 were planted in tea. Land No. 18 was planted at the same time. Before I planted it in tea it was a chena land. I had to get the land cleared before I planted it. By P17 and other deeds I am able to identify the valours blocks in schedule A to the plaint. I identify lot AI as lot 106, lot A2 as part of lot 109, Lot A4 as also part of lot 109. 30 Lot A5 is described as Gallenamulahena, to the south of lot III. Lot A6 is lot 108, lot A7 is lot 107, A8 is part of lot 104, A9 consisting of 2 lands Bakmiangehena and Puranehena, is lot 101. Puranehena is to the East of lot IOI and is marked as lots IOO and IO2. AIO is lot 97, AII is lot III, AI2 is lot IIO, AI3 is a part of lots IIO and II2, AI4 is lot II4 and the adjoining field is lot 113. A15 is lot 105. A16 is not surveyed here. A17 is a part of lot 104. A12 and A13 are lands adjoining lots 110 and 112. Lot 110 is Batapandurehena alias Walauwehena. A13 is Dangahamadehena alias Batapandurehena. The owners of A12 are also the owners of A13. A4 which is lot 109 is called Batapandurehena alias 40 Tembiligahawatte hena. In Plan P17 its name is Tembiligahahena. (Witness reads the boundaries from Plan P17).

No. 12 Plaintiff's Evidence C. W. Peiris Examination —Continued. Land 18 in schedule A is depicted in plan (Y). The lands in schedule B are depicted in plan X. The first land in land B1 has not been surveyed. I cannot identify it in plan P17. (Shown plan Z). I cannot identify that land even in plan Z. Land B2 is lot No. 91 in P17, B3 is lot 93, B4 is lot 94, B5 is lot 96, B6 is lot 92, B7 is lot 90. I cannot identify B8 in P17. B9 is lot No. 95, B 10 is lot 89. (All the lands in schedule A were planted in tea in 1927). The lands in schedule B were not planted even in 1947. Shortly after the transfer to me, I and a number of people were sued in D. C. Colombo case No. 19983 in respect of Kempitikanda Group. A trust was pleaded. There also the appeal was lost.

I produce the title deed in favour of Boyagoda No. 31999 of 6.6.1916 (P18) for land A1.

(Objected to as they have not been pleaded).

(Mr. Weerasooriya cites 9 S.C.C. at page 185).

ORDER :—I find the same question is answered in the case reported in 9 S.C.C. page 185, that it is incumbent of the plaintiff to set out title clearly and precisely so that the other side be given an opportunity of meeting this case. In the present case paragraph 2 of the amended plaint avers that the original owners of the lands were two people T. B. and H. W. Boyagoda, but how these two Boyagodas became the original owners is not set out. I have, therefore, to hold that it is not open for the plaintiff at this stage to prove how the Boyagodas became the owners by certain deeds which have not been pleaded in this case. I uphold the objection).

I seek to produce the title deeds in favour of Boyagodas in respect of each of the lands in schedules A and B.

(Objected to, on the same grounds that they have not been pleaded. I uphold the objection for the same reasons).

At this stage Mr. Perera moves to amend the plaint with a view to setting out the title with greater details. Mr. Weerasooriya has no 30 objections.

ORDER—I allow the application to amend the plaint on terms. Take case off trial roll. Amended plaint on 23.7.51. Plaintiff to pay defendant Rs. 315/- as costs.

> Intd. N. S., D.J., 19.7.51.

It is agreed now between the Counsel that even after the amended answer necessary is filed by defendants, the case will be re-fixed for trial on the 17th, 20th and 24th August, 1951.

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No. 13

FURTHER AMENDED PLAINT OF THE PLAINTIFF

IN THE DISTRICT COURT OF KEGALLA.

No. 6269.

Nature : Rei Vindicatio Value : Rs. 50,830/-Class Stamps : Rs. 25/50.

MRS. CECILY H. M. PEIRIS, presently of 66, Campbell Place, Colombo 10......Plaintiff.

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· Vs.

- I. MRS. CHARLOTTE MARY CLARA FERNANDO of "Credon", 18, Castle Street, Colombo 8
- 2. MRS. REINEE MARY PHYLLIS PERERA, wife of Dr. A.F.S. Perera lately in England, presently also of "Credon", 18, Castle Street, Colombo 8......Defendants.

On this 23rd day of July, 1951.

The further amended plaint of the plaintiff above-named appearing by her Proctor L. A. Goonewardane of Kegalla states as follows :—

The parties to this action reside at the aforementioned places
 and the lands which are the subject-matter of this suit are situated in the District of Kegalla within the jurisdiction of this Court.

2. That the original owners of the lands and premises described in the schedules A and B herein were two people Messrs. T. B. and H. W. Boyagoda.

3. That by Mortgage Bond No. 873 of 31st January, 1920 the said T. B. and H. W. Boyagoda together with one K. D. M. Perera as surety mortgaged and hypothecated to and with O.A.P.R.M.A.R. Palaniappa Chettiar and P.L.S.P.L. Caruppen Chettiar *inter alia* the lands and premises fully set out in the schedule A and B hereto.

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4. The aforesaid Palaniappa Chettiar and Caruppen Chettiar put the said Mortgage Bond in suit in case No. 8477 of the District Court of Colombo and obtained decree therefor on the 9th day of May, 1923.

5. Under the decree in the said case No. 8477 the mortgaged premises *inter alia* the lands in the schedule A and B hereto were sold by Public Auction on the 12th July, 1924 and were bought in by the judgment creditors the aforesaid two Chettiars who in confirmation of their title obtained a conveyance from the Secretary of the District Court, Colombo, No. 306 dated 9th February, 1925.

No. 13 Further Amended Plaint of the Plaintiff 23.7.51

No. 13 Further of the Plaintiff 23.7.51 -Continued.

6. The said Chettiars thereafter by their deed No. 32 of 8th April, Amended Plaint 1925 sold and transferred *inter alia* the lands in the schedule A and B hereto Messrs. C. W. Peiris, D. J. B. Ferdinando and A. C. de Mel.

As an alternative title the plaintiff pleads :—

7. (a) That after the decree in case No. 8477 referred to in paragraph 5 above the said T. B. and H. W. Boyagoda inter alia purported to sell to one D. A. R. Senanayake by deed of sale No. 194 dated 14th June, 1924 the lands and premises in the schedule A and B together with other lands.

(b) The said D. A. R. Senanayake by deed No. 757 dated 1st 10 April, 1925 transferred *inter alia* the lands in the schedules A and B hereto to the aforesaid Messrs. C. W. Peiris, D. J. B. Ferdinando and A. C. de Mel, who thereupon became absolute owners of the said premises.

The said C. W. Peiris, D. J. B. Ferdinando and A. C. de Mel 8. by their deed of sale No. 34 dated 9th April, 1925 and No. 72 dated 22nd March, 1926 sold and conveyed inter alia a 175/300 or 7/12 shares of the lands in the schedule A and B hereto to Messrs. A. P. Craib and A. D. Callander.

9. The said C. W. Peiris, D. J. B. Ferdinando and A. C. de Mel by deeds Nos. 780 dated 15th July, 1925 and 1069 dated 5th March, 20 1930 thereupon declared between themselves the respective proportions in which they held the balance 5/12 shares, namely, the said C. W. Peiris to half of 5/12 or 15/72 shares, the said D. J. B. Ferdinando to one third of 5/12 or 10/72 shares and the said A. C. de Mel to one sixth of 5/12 or 5/72 shares.

The said C. W. Peiris by deed No. 1252 of 11th June, 1929 I0. sold and transferred inter alia a 125/600 or 15/72 shares of premises herein to the plaintiff.

The said D. J. B. Ferdinando by deed No. 1070 dated 5th II. 30 May, 1930 sold and conveyed a half share of his holding, namely a 5/72share or 60/864 shares to H. G. Rowbotham now known as H. C. Rodale, C. J. Strachan, J. Strachan, J. G. Allen and P. M. Ondaatje in the following proportions to wit, H. C. Rodale to 40/864 shares and to each of the others a 5/864 shares.

The said A. C. de Mel by deed No. 1534 of 28th November, 1932 sold and transferred his 5/72 shares of the premises herein to Messrs. Hull Blyth & Coy. of Colombo who by deed No. 2290 dated the and August, 1938 sold and transferred the same to Kathleen de Mel.

The said D. J. B. Ferdinando by deed No. 470 dated 4th 13. September, 1939 sold and transferred his remaining 5/72 shares of the said premises to one C. E. Perera of Panadure.

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The said C. E. Perera by deed No. 521 dated 10th September, 1941 sold a one third share of his 5/72 shares to Lakshmi Ferdinando and the said C. E. Perera also by deed No. 591 of 21st July, 1944 sold a further one sixth share of his 5/72 share to the said Lakshmi Ferdinando.

The said A. P. Craib, A. D. Callander, Kathleen de Mel, H. C. 15. Rodale, P. M. Ondaatjie, C. J. Strachan, J. Strachan, J. G. Allen, AmendedPlaint together with the said C. W. Peiris, D. J. B. Ferdinando and A. C. de Mel by their deed of agreement No. 1151 of 2nd and 8th November, 1945 *inter alia* agreed to sell their 52/72 shares of the premises herein to the plaintiff and in pursuance of the said agreement the said eleven people aforementioned by their deed No. 2369 of 25th and 27th September, 1946 sold and transferred the said shares of the said premises to the plaintiff.

No. 13 Further of the Plaintiff 23.7.51 -Continued.

16. The said plaintiff thereupon became the absolute owner of 10 67/72 shares of the premises herein and the said Lakshmi Ferdinando (now Goonewardena) and the said C. E. Perera were the owners of the balance 5/72 shares of *inter alia* the lands in the schedules A and B herein

17. That by virtue of deed of Exchange No. 2371 of 25th September, 1946 the said C. E. Perera and Lakshmi Ferdinando (now Goonewardena) conveyed their 5/72 shares of the premises herein to the plaintiff in return for various divided allotments of other lands which were conveyed to them by the plaintiff.

18. The plaintiff pleads the full benefit of her title by prescription in terms of Section 3 of the Prescription Ordinance No. 22 of 1871.

The plaintiff states that the 1st defendant was the owner of the 19. premises called Uduwewala Group or Estate which adjoins Utuwankanda Estate of which the premises in the schedules A and B form part.

That the plaintiff has been informed and as would appear from the answer already filed, that the 1st defendant's daughter Mrs. Reinee Mary Phyllis Perera is now the owner of an undivided one half share of the said premises Uduwewela Group upon an unregistered Deed of Gift No. 1046 dated oth August, 1936 attested by C. E. P. Jayanayake of Colombo, Notary Public, and the said Mrs. Reinee Mary Phyllis Perera being thus a necessary party and being then in England was made the 2nd defendant herein by her duly appointed Attorney.

The plaintiff further states that an extent of about forty three 21. acres out of the premises described in schedule A herein is planted in Tea, which said plantation was made from the year 1927 during the co-owner of the said A. P. Craib, A. D. Callander, C. W. Peiris, D. J. S. Ferdinando and A. C. de Mel, the plaintiff's predecessors in title.

22. The plaintiff further states that the premises in schedule B were always in jungle or chena and unplanted until the year 1947 when the defendant began planting the same in spite of the protest of the plaintiff.

23. The plaintiff now complains to this court that the defendants are in the wrongful possession of the premises, in schedule A ever since her purchase in the year 1946 and of the premises in schedule B from the year 1947 to the plaintiff's loss and damage of Rs. 11,739/- for the last two years made up as follows :- The plaintiff estimates that a reasonable yield from the said forty three acres of Tea would be 390 lbs. made Tea per acre per annum and the profit per pound would be cents 35.

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No. 13 Further of the Plaintiff -Continued.

The plaintiff has now discovered that the defendants particularly 24. Amended Plaint the 1st defendant have committed a series of frauds by suppressing certain important and material facts and by falsely representing to certain Government Officials, such as, the Assistant Government Agent, Kegalla, the Land Settlement Officer and the Tea Controller Department that the lands in schedule A and B hereto were owned by the 1st defendant by producing certain fictitious survey plans and by making wrongful and illegal use of them to the serious damages and detriment of the plaintiff and any deed grant conveyance order or settlement obtained by the defendants are of no avail against the plaintiff not having been obtained according to law.

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25. The plaintiff estimates the value of the premises in the schedule A and B herein which in the aggregate consist about sixty acres at Rs. 39,100/-.

26. (a) Further setting out in detail the title of Boyagoda aforesaid in respect of each of the lands mentioned in the schedules hereto the plaintiff pleads that at one time one A.W.E.M.B.R. Punchi Banda Alutnuwara Basnayake Nilame being by maternal inheritance entitled to the 1st, 13th and 14th lands in schedule A and 9th land in schedule B, sold and transferred then by deed No. 6929 of 2 February, 1916 to Wereke Dharmaratana Unnanse and H. B. A. W. Loku Banda who together on deed No. 31999 of 6th June, 1916 transferred the same to the said T. B. Boyagoda.

(b) The land 13 in schedule A and land 9 in schedule B were transferred by the said Loku Banda on deed No. 4235 of 3 December, 1913 to the aforesaid Wereke Dharmaratana Unnanse who on deed No. 6339 of 15th March, 1917 transferred same to T. Sumangala Unnanse who by deed No. 867 of 26th January, 1920 sold same to the said T. B. Boyagoda.

(c) The land 14 in schedule A was transferred by the aforesaid Loku Banda on deed No. 4235 to W. Dharmaratana Unnanse who by 30 deed No. 14795 of 1st July, 1916 sold to three persons D. A. Wickremasinghe, P. L. R. Joseph Cooray and H. S. Manchanayake the first two of whom on Deed No. 19864 of 20th January, 1920 sold to said H. S. Manchanayake who by deed No. 869 of 31st January, 1920 sold to the said T. B. Boyagoda.

(d) The aforesaid W. Dharmaratana being by deed No. 2360 of 4th September, 1910 the owner of land 17 in schedule A transferred the same on deed 6339 aforesaid to Sumangala Unnanse who on deed No. 867 aforesaid sold to T. B. Boyagoda.

27. One W. M. Dingiriappu being by paternal inheritance entitled 40 to land No. 2 in schedule A sold same by deed No. 26861 of 12th November, 1896 to D. A. D. Nanayakkara whose daughter Ellen by deed No. 1610 of 19th August, 1913 sold same to Berakarayalage Sangitha who on deed No. 32739 of 28th November, 1916 sold to the said T. B. Boyagoda.

28. (a) One Punchi Banda being the owner of lands 4, 5, 6 and 7 of schedule A died leaving three children Loku Banda, Punchimahatmaya Amended Plaint and Medduma Banda who by deed No. 15320 of 20th November, 1916 transferred 4/6th share to the said T. B. Boyagoda who had on deed No. 32658 of 14th November, 1916 purchased a 2/6th share from aforesaid Medduma Banda and one A. W. Kiri Banda the vendee from Loku Banda the brother of Medduma Banda on deed No. 3648 of 7th May, 1914 of a 1/6th share.

(b) On the aforesaid deeds No. 32658 which refers to unregistered 10 deed No. 20784 of 7th December, 1914 and 15320 the said T. B. Boyagoda became the owner of lands 3 and 4 in schedule B.

(c) The said T. B. Boyagoda on deed No. 34516 of 19th November, 1017 became entitled to lands 8, 9 and 10 in schedule A and to land 11 in schedule A and land No. 5 in schedule B on deed No. 1832 of 7th July, 1919. As further title to land 5 in schedule B one Ranhamy and Dingirimenika being the owners transferred by deed No. 6002 of 15 September, 1879 to D. H. Appuhamy who on deed No. 434 of 18th January, 1899 transferred to N. H. M. Appusingho Appuhamy who on deed No. 31803 of 31st October, 1899 transferred to N. K. Noordeen and H. Mudalihamy who by deed No. 32822 of 10th December, 1916 sold to T. B. Boyagoda.

29. One E. M. Loku Banda claiming title from his mother Loku Kumarihamy of Erawpola Walawwe transferred land 12 in schedule A by deed 3901 of 19 January, 1889 to H. Mudiyanse who by deed No.25077 of 12th October, 1911 gifted the same to his nephews Siyatu, Ranhamy and Punchi Banda who together with the donor Mudiyanse transferred same on deed 18323 dated 17th January, 1913 to M. G. P. Suramba Veda, who by deed 33340 of 13th March, 1917 sold to Y. T. M. Ukkubanda who by deed 33827 of 25th June, 1917 sold to T. B. Boyagoda.

30. One Golahela Loku Kumarihamy being the owner of land Taradeniye tenne hena No. 18 in schedule A and depicted in Plan No. 1077 filed of record transferred by deed No. 85 of 22nd December, 1867 a half share to Medduma Kumarihamy and the other half share by deed No. 86 of the same date to Loku Banda Ex Koralemahatmaya. Medduma Kumarihamy by deed No. 2036 of 23rd October, 1882 transferred the entire land to H. A. W. Molligoda who on deed No. 30369 of 22nd November, 1898 sold to D. W. M. Punchi Banda Korale who on deed 4424 of 30th November, 1903 sold to H. N. A. W. Loku Banda aforesaid whose title passed on deeds 4235, 6339 and 867 referred to 40 hereinbefore to T. B. Boyagoda whose title has enured to the benefit of the plaintiff.

31. Land 2 in schedule B was at one time owned and possessed by D. Sirimalee who by deed No. 6189 of 7th April, 1881 sold to D. Dantu who by deed No. 25279 of 23rd November, 1911 sold to Daulkarayalage Surangani who by deed No. 32890 of 16th December, 1916 sold to the said T. B. Boyagoda.

No. 13 Further of the Plaintiff -- Continued.

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No. 13 Further of the Plaintiff 23.7.51 -Continued.

32. One E. M. Loku Banda Lekama being the owner of land 6 and Amended Plaint 7 in schedule B sold the same by deed 2649 of 2nd April, 1898 to A. W. MUDALIHAMY, Village Headman who by deed No. 13965 of 3rd December, 1915 sold to B. A. Mudiyanse, who by deed No. 1468 of 7th April, 1919 sold to T. B. Boyagoda who by deed No. 1010 of 20th December, 1916 and deeds No. 113 of 14th August 1925, No. 115 of 19.8.1925, No. 129 of 3.9.25 and 442 of 16.8.26 became entitled to land No. 10 in schedule B. The vendors on the said deed 1010 were entitled to the same by virtue of deed 9001 of 30th May, 1885.

> One W. M. Dingiriappuhamy being the owner of land I in 10 33. schedule B transferred the same on deed 8494 of 5th November 1894 to A. A. Kaurala who on deed No. 2756 of 2nd July, 1913 sold to E. H. Kusalhamy who on deed No. 32758 of 1st December, 1916 sold to T. B. Boyagoda aforesaid.

34. The plaintiff plead that the deeds relied on by her are duly registered and obtain priority over the deeds relied on by the defendants by virtue of due and prior registration.

35. The plaintiff claims compensation from the defendants at the rate of Rs. 1,000/- per acre in the event of defendants being declared entitled to any portion of the said lands in schedule A.

Wherefore the plaintiff prays :---

- (a) For a declaration of title to the lands and premises fully set out in the schedule A and B herein or in the alternative to compensation for plantations on schedule A at the rate of Rs. 1,000/per acre.
- (b) for damages of Rs. 11,739/- up to date with further damages at Rs. 5,869/- per annum until plaintiff is restored to possession of the said premises.
- That the defendants be ejected from the said premises and the (c)plaintiff be placed and quieted in possession thereof.
- (d) for costs of suit.
- (e) for such other and further relief as to this Court shall seem meet.

Sgd. L. A. GOONEWARDANE, Proctor for plaintiff.

(Schedules A and B are not printed as they are identically the same as the Schedules A and B appearing on pages 19 to 23)

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No. 14

FURTHER AMENDED ANSWER OF THE DEFENDANTS

No. 14 Further Amended Answer of the Defendants 14.8.51

IN THE DISTRICT COURT OF KEGALLA.

No. 6269.

Vs.

MRS. C. M. C. FERNANDO and I.

MRS. R. M. P. PERERA, both of Colombo......Defendants. 2.

On this 14th day of August, 1951.

I move to amend the answer of the defendants by the addition of the following paragraphs to the amended answer filed on 21st November, 1950.

(24) These defendants deny all and singular the averments made in paragraphs 26 to 34 of the amended plaint save such as are consistent with the averments made herein.

(25) These defendants deny that lands 1, 2, 3, 4, 5, 6, 7, 8, 16 and 17 in schedule A to the plaint are depicted in plans Nos. 1077, 1078 and 1079 filed of record.

(26) These defendants state that lands 2 and 7 in schedule A are 20 in the possession of Mr. L. B. de Mel as part and parcel of Laukka Estate.

27. As an alternative title plaintiff pleads that T. B. Boyagoda was at one time the owner of the lands claimed by Plaintiff and the said T. B. Boyagoda conveyed the said lands to M. K. R. Caruppen Chetty on deed No. 367 of 15th August, 1920 attested by C. Murugesan, Notary.

28. The aforesaid Caruppen Chetty mortgaged the said lands on Bond No. 369 dated 16th August, 1920 to S. K. R. S. L. Letchuman Chettiar, S. K. R. S. L. Muttiah Chettiar, S. P. K. A. A. Annamali Chettiar and S.P.K.A.A.M. Supramaniam Chettiar for Rs. 25,000/- and the said mortgagees sued on the said bond in action No. 6313 of the 30 District Court of Colombo and obtained decree thereon for a sum of Rs. 26,375/- and the said lands mortgaged were put up for sale on 22nd November, 1924 on orders of Court in the said action and were purchased by the mortgagees, Muttiah and Suppramaniam on deed No. 402 of 10th December, 1925 attested by F. Mack, Notary.

29. The said purchasers on deed No. 492 by their deed No. 1377 of 16th May, 1925 attested by W. O. Herath Notary, conveyed the same to D. James who by deed No. 380 of 21st June, 1927 attested by N. Ramachandra, Notary conveyed to D. A. R. Senanayake and H. W. Boyagoda who on deed No. 1065 of 18th January, 1928 attested by R. L. Perera conveyed to 1st defendant.

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No. 14 Further Amended Answer of the Defendants 14.8.51 —Continued. 30. These defendants plead that the deed 873 pleaded in paragraph 3 of the Amended plaint was not duly registered and these defendants plead that M. K. R. Caruppen Chetty, transferee on deed No. 367 and the Mortgagees on bond No. 369 pleaded herein were necessary parties to action No. 8477 of the District Court of Colombo pleaded by Plaintiff and the said persons not being made parties thereto they (the said M. K. L. Caruppen Chetty and the Mortgagee on deed 369) and their successors in title defendants herein are not bound by the decree in action No. 8477 and steps taken pursuant thereto and the sale held in pursuance thereof and defendants therefore obtain good and valid title to the said lands.

31. These defendants specially deny that plaintiff is entitled to the claim made in paragraph 35 of the Amended plaint and specially state that in law plaintiff is not entitled to make the said claim in this action the same not having been made in the plaint originally filed and amounting as it does to a fresh of action.

32. These defendants state that if the lands in plan No. 1078 filed of record were not the property of the Crown at the date of the issue of the Crown Grants pleaded by these defendants title to the lands comprised therein were as set out below :---

(a) One Samarakoon Mudiyanselage Kottalbadde Nilame by virtue 20 of a Talpat of the year 1755 was at one time the owner of the land called Batapandurehena.

(b) The said title devolved on one P. M. Punchi Menike who by deed No. 378 of 28th October, '57 attested by D. A. Jayasekera notary gifted to K. S. M. Dingiri Mahatmaya and S. M. Punchi Mahatmaya from whom it devolved on Punchi Nilame and Kiri Banda Korale children of Punchi Mahatmaya aforesaid—the said Dingiri Mahatmaya having died intestate and issueless.

(c) The aforesaid Punchi Nilame and Kiri Banda by deed No. 28201 of 1st February, 1916 attested by D. G. Fernando conveyed to Werake Thero who also obtained rights on deed No. 28096 of **15th January**, 1926 attested by the same notary and the said Wereke Thero by deed No. 32114 of 23.4.28 attested by D. G. Fernando conveyed to P. L. S. Cooray agent of the 1st defendant.

(d) These defendants became entitled to the land called Gallenamulahena in the same manner and by virtue of the same devolution of title as set out in paragraph 32 (b) and (c).

(e) These defendants became entitled to the land called Dangollehena in the same manner and by virtue of the same devolution of title as set out in paragraph 32(a), (b) and (c).

(f) One Werapperuma Aratchige Ranmenike by right of inheritance from her father Punchirale was entitled to an undivided 1/4 share of the land called Bakmiyangehena and Purana.

(g) One Weerapperuma Aratchige Ukku Banda by right of Inheritance from his father Pinhamy was entitled to an undivided 1/4 share of the land Bakmiangehena.

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(h) By deed No. 33331 of 15th January, '29 and 33395 of 28th January, '29 attested by D. G. Fernando, Notary, the said Ran Menika and the said Ukku Banda conveyed their right to 1st defendant.

Alutgamarallage Ausadhamy was by right of inheritance from his father Dingiriappu entitled to 1/16 share of the land called Yonpallihahena and the said Ausadahamy conveyed the same to 1st defendant by deed No. 33307 of 10th January, 1929 attested by D. G. Fernando.

(*j*) One Alutgamarallage Punchi Amma who was entitled thereto by inheritance from his father Dingiri Appu by deed No. 333562 of 4.2.29 attested by D. G. Fernando conveyed a further 1/16 share to 10 ist defendant.

(k) One Wansaperuma Aratchige Ran Menika who was entitled thereto by inheritance from her father Punchirala by deed No. 33331 of 15th January, '29 attested by D. G. Fernando conveyed 1/4 share to 1st defendant.

One Mudiyanse by inheritance from his mother Ranhamy and one Chandrasekera and one Kiri Banda who were entitled thereto by inheritance from their father Mudalihamy conveyed an undivided 1/5 share of the same land to 1st defendant.

(m) Rankotpedige Menika was by virtue of deed No. 5761 of 21st March, '05 attested by G. J. Abeysekera, entitled to the land called Ethinimalahena and by deed No. 32112 of 23rd March, '28 attested by D. G. Fernando conveyed 1/5th share to 1st defendant.

(33) These defendants state that the land called Sidarampadeniya was owned at one time by S. M. Kotalbodde Nilame by virtue of Talpat deed dated 1755 and the said title devolved on S. M. Dingiri Mahatmayo and S. M. Punchi Mahatmayo as recited in paragraph 32 (b) hereof and thence on S. Punchi Nilame and Kiri Banda referred to in paragraph 19(d)of the Amended Answer earlier filed by these defendants.

(34) The 1st defendant claims title to Totapoladeniya in the same manner as claimed for Siddarampadeniya.

(35) The 1st defendant claims title to 3/4 share of the land called Bulanegawamukalana by virtue of deeds Nos. 35043 of 10th February, 1920, 28153 of 22nd January, 1926 and 28420 of 17th March, 1926 all attested by D. G. Fernando and deed No. 191 of 21st August, 1931 attested by D. Jayawardena, Notary and to 1/4th share by virtue of deed No. 1324 of 29th September, 1937 attested by K. B. Karunaratne, Notary and executed by one Neelakanthi Hetti Mudiyanselage Davith Appu who owned the same by virtue of deed No. 2483 of 15th February, 24 40 attested by D. G. Fernando, Notary.

36. Paragraph 14 of Amended Answer filed on 21.11.50 should read "Erewpola Medduma Kumarihamy-not Loku-Kumarihamy."

Wherefore the defendants pray for relief as claimed in the answer filed on the 21st day of November, One thousand Nine hundred and Fifty (1950).

Sgd. J. H. FERNANDO, Proctor for defendants.

No. 14 Further Amended Answer of the Defendants 14.8.51 -Continued.

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No. 15

No. 15 Motion of the Proctor for Defendants 18.8.51

MOTION OF THE PROCTOR FOR DEFENDANTS

IN THE DISTRICT COURT OF KEGALLA.

No. 6269.

MRS. C. H. M. PEIRIS presently of 66, Campbell Place, Colombo 10......Plaintiff.

Vs.

MRS. M. C. FERNANDO of Colombo and another.....Defendants.

On this 18th day of August 1951.

I move to file the defendants' additional list of witnesses in the above 10 case and move for summons on the 2nd witness to be issued in duplicate one to Fiscal of W. P. and one to Deputy Fiscal of Kegalla for the 21st instant.

List of witnesses referred to

1. The Asst. Govt. Agent Kegalla to produce or cause to be produced Preliminary Plans Nos. 2573, 2574, 2067, 8103, 1830, 2440, 2844, 3087, 7949, 5919 and 3997 (copies being applied for).

2. The plaintiff to produce on the 20th instant and on all trial dates the combined plan dated 1.9.46 of Utuwankanda Estate made by D. A. Perera Amarasinghe licensed Surveyor and mentioned in Deed 20 of Exchange No. 2371 attested by J. S. Paranavitana, N.P. and relied on by the plaintiff.

3. L. J. Montgomery, Messrs. Bois Bros. Colombo.

Sgd.....

Proctor for Defendants.

Received notice with copy.

I object to this list as I cannot now at 10 a.m. on 18.8.51 get in touch with my client or my Counsel. Item No. 2 does not give a number and is not referred to in my pleadings and at this late hour I am unable to ascertain what it is since the full brief has been handed to Counsel 30 long ago.

Sgd.....

Proctor for Plaintiff.

No. 16

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FURTHER ISSUES FRAMED

No. 16 Further Issues Framed 20.8.51

20.8.51

Vide proceedings of 19.7.51. Appearances as before.

The motion dated 18.8.51 is filed by Proctor for defendants in which plaintiff is noticed to produce a combined plan dated 1.9.46 of Utuwankanda Estate made by D. A. Perera Amerasinghe, surveyor, and mentioned in Deed of Exchange No. 2371 attested by J. S. Paranavitarne, N.P.— Mr. Goonewardane, Proctor for plaintiff, who has objected to the motion on the ground that the notice has been insufficient further states that the plan referred to in that deed of exchange is a plan for the land which the plaintiff gave in exchange for undivided shares of the land in dispute and that no portion of the land in dispute is therefore depicted in that plan

Parts I and 3 of the motion are allowed.

Mr. Advocate Perera for plaintiff raises other issues than the ones already raised and accepted.

- (25) Does the title of the plaintiff to the lands in question gain priority over the title, if any, of the defendants by virtue of due and prior registration of the deeds in favour of the plaintiff ?
- (26) What compensation, if any, is the plaintiff entitled to for improvements, if any, made on the land in dispute?
 - (27) Was S. M. K. Nilame referred to in paragraph 32a of the amended answer the owner of Batapandurehena?
 - (28) How did his title devolve on P. M. Punchimenika referred to in paragraph 32b of the amended answer?
 - (29) Were Punchi Nilame and Kiri Banda the children of Punchimahatmaya aforesaid ?
 - (30) Are the defendants entitled to rely on a deed in favour of P. L. S. Cooray in paragraph 32c of the answer to give title to them ?
- (31) Are the defendants entitled to the lands pleaded in paragraphs 32 to 35 on the deeds pleaded by them in the amended answer of 14.8.51 ?
- Mr. Weerasooriya objects to issue No. 26 and the claim to compensation on the ground that it sets out a different cause of action which was not in the original plaint.

Mr. Perera cites 20 N.L.R.60 and 21 N. L. R., 205.

ORDER—I allow the issue.

(32) If the plaintiff entitled to amend his plaint, introducing the fresh cause of action pleaded in paragraph 35 of the amended plaint?

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No. 16 Further Issues Framed 20.8.51 —Continued.

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- (33) Would the alleged claim to compensation set out in paragraph 35 have been prescribed if sued upon at the date of the amendment to the plaint?
- (34) Was Punchi Banda, Basnayake Nilame, at one time the owner of the lands Nos. 1, 13 and 14 in schedule A and No. 9 in schedule B of the plaint ?
- (35) Did the interests of the said Punchi Banda devolve on T. B.
 Boyagoda as set out in paragraph 26 subparagraphs (a), (b) and (c) of the amended plaint of 23.7.51?

(Mr. Advocate Perera moves to amend paragraph 26a of the 10 amended plaint of 23.7.51 by deleting the words "the same" in the last line of 26a and substituting the words "first land." I allow the amendment).

- (36) Did T. B. Boyagoda become entitled to the lands described in paragraphs 26a to 33 of the amended plaint of 23.7.51 in the manner set out in the said paragraphs?
- (37) Do the deeds referred to in the said paragraphs of the amended plaint apply to the lands referred to in the respective paragraphs of the amended plaint ?
- (38) Are all or any of the said lands depicted in plans Nos. 1077, 20 1078 and 1079 filed of record ?
- (39) Did the title of T. B. Boyagoda in respect of all or any of the lands in schedules A and B of the plaint pass to M. K. R. Karuppen Chetty by virtue of deed No. 367 of 15.8.20 pleaded in paragraph 27 of the amended answer ?

(Mr. Advocate Weerasuriya moves to amend paragraph 27 of the amended answer of 14.8.51 by deleting the word "plaintiff" and substituting the word "defendant" in paragraph 27. I allow the amendment).

- (40) Did the title of the said Karuppen Chetty, if any, pass to 1st defendant in the manner pleaded in paragraphs 28 and 29 30 of the amended answer ?
- (41) Was Karuppen Chetty a necessary party to action 8477 of the District Court of Colombo mentioned in the plaint?
- (42) Also, were the mortgagees on mortgage bond No. 369 mentioned in paragraph 28 of the amended answer necessary parties thereto?
- (43) If so, are the defendants, as successors in title to the said Karuppen Chetty, bound by the proceedings in the said action 8477 D.C. Colombo ?

MR. PERERA RAISES THE FURTHER ISSUES :---

- (44) Are all or any of the lands mortgaged on bond 873 of 31.7.20 put in suit in C.D. Colombo case 8477 the same as the lands mortgaged on bond 369 of 16.8.20?
- (45) If not, were the said mortgagees necessary parties to action 8477 D.C. Colombo ?

I accepted all the issues. It is agreed that the evidence already recorded in the case be read as part of the evidence in the case.

Intd. N. S., D.J., 20.8.51.

No. 17

PLAINTIFF'S EVIDENCE

Plaintiff's case continued : Mr. Perera calls :

C. W. PEIRIS, recalled, sworn,

FURTHER XD :—I referred last time to an action by Boyagoda against me, Ferdinando, De Mel, Craib and Callander. That was action 19983. Boyagoda lost the case in the District Court and in the Supreme Court. He appealed to the Privy Council and he lost the case there also. I produce Privy Council decree (P18). In connection with my title I have
20 produced the deeds and I referred to a mortgage bond 873 by T. B. and H. W. Boyagoda of 31.1.20 in favour of Palaniappa Chetty and Caruppen Chetty, which I now produce (P19). That bond was put in suit in D. C. Colombo case 8477. I produce a certified copy of the plaint (P20) and the decree (P21).

(Mr. Perera moves to refer to the lands in dispute thus—lands in schedule A of the plaint as AI to AI8 and the lands in schedule B as BI to BI0. I allow it).

One A.W.E.M.B.R. Punchi Banda, Basnayake Nilame, was by maternal inheritance entitled to lands AI, AI3, AI4 and B9. He by deed
30 No. 6929 of 2.2.16 (P22) attested by D. P. S. Senanayake, N.P. transferred the same to Wereke Dharmaratana Unnanse and Loku Banda, both of whom by deed No. 31999 of 6.6.1916 (P23) attested by Y.K.B. Seneviratne transferred land AI to T. B. Boyagoda. Lands AI3 and B9 were transferred by Loku Banda by deed No. 4235 of 3.12.13 (P24) attested by H. S. Manchanayake to Wereke Dharmaratana Unnanse, who by deed No. 6339 of 15.3.1917 (P25) attested by H. S. Manchanayake transferred his interests to T. Sumangala Unnanse, who by deed No. 867 of 26.1.20 (P26) attested by J. A. Perera, N.P., transferred to T. B. Boyagoda. Land AI4 was transferred by Loku Banda on deed P24
40 to Dharmaratana Unnanse, who by deed No. 14795 of 1.7.1916 (P27)

No. 16 Further Issues Framed 20.8.51 —Continued.

No. 17

Plaintiff's Evidence

C. W. Peiris' Examination

No. 17 Plaintiff's Evidence C. W. Peiris' Examination —Continued. attested by D. G. Fernando, N.P. transferred the same to three persons— Wickremasinghe, Cooray and Manchanayake. Wickramasinghe and Cooray by deed No. 19864 of 20.1.20 (P28) attested by D. G. Fernando, N.P. transferred their 2/3 share of land A14 to H. S. Manchanayake, who by deed No. 869 of 31.1.1920 (P29) attested by J. A. Perera transferred the same to T. B. Boyagoda.

Dharmaratana was on deed No. 2316 of 4.9.1910 the owner of land A17. He by deed P25 transferred it to Sumangala Unnanse, who by deed P26 transferred it to T. B. Boyagoda.

One Dingiriappu was by paternal inheritance entitled to land A2 10 and he by deed No. 26861 of 12.11.1896 (P30) attested by D. C. Appuhamy, N.P., transferred it to D. A. D. NANAYAKKARA, who died leaving one daughter Ellen, who by deed No. 1610 of 19.8.1913 (P31) attested by E. S. Rajasekera, N.P., transferred the same to Berakarayalage Sangitha, who by deed No. 32739 of 28.11.16 (P32) attested by Y. K. B. Seneviratne transferred it to T. B. Boyagoda.

One Punchi Banda being the owner of lands A4, A5, A6 and A7 died leaving 3 children—Medduma Banda, Loku Banda and Punchimahatmaya. Loku Banda by deed No. 3648 of 7.5.1914 (P33) attested by H. S. Manchanayake sold 1/6th share to A. W. Kiri Banda. Kiri Banda, the vendee on P33, and Medduma Banda, one of the sons of Punchi Banda, by deed No. 32658 of 14.11.16 (P34) attested by Y. K. B. Seneviratne transferred 2/6ths share to T. B. Boyagoda.

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Madduma Banda, Loku Banda and Punchimahatmaya by deed No. 15320 of 20.11.1916 (P35) attested by D. G. Fernando transferred the balance 4/6ths share to T. B. Boyagoda.

On P34 which refers to an unregistered deed No. 29784 of 7.12.1914 (P36) attested by Y. K. B. Seneviratne, and on deed (P35) T. B. Boyagoda became the owner of lands B3 and B4. T. B. Boyagoda became entitled to lands A8, A9 and A10 by deed No. 34516 of 19.11.1917 (P37) attested by Y.K.B. Seneviratne and to land B5 on deed 1832 of 7.7.1919 (P38) attested by S. G. R. Wijewardene, N.P. He got title to A11 also on that deed P38. As further title to land B5, one Ranhamy and Dingirimenika were the owners of the said land and they by deed No. 6002 of 15.9.1879 (P39) transferred the land to D. H. Appuhamy, who by deed 434 of 18.1.1899 (P40) transferred it to Appusingho Appuhamy, who by deed 31893 of 31.10.1899 (P41) attested by D. C. Appuhamy, transferred it to Noordeen and Mudalihamy, who by deed 32822 of 10.12.16 (P42) attested by Y. K. B. Seneviratne transferred it to T. B. Boyagoda.

One E. H. Loku Banda, claiming title from his mother Lokukumarihamy of Erawpola Walauwe, transferred land A12 by deed No. 3901 of 19.1.1889 (P43) attested by Y. K. B. SENEVIRATNE, to H. Mudiyanse, who by deed 25077 of 12.10.1911 (P44) attested by Y. K. B. Seneviratne transferred his interests to 3 persons—Siyatu, Ranhamy and Punchi Banda, the sons of his elder brother. The three of them together with their donor Mudiyause, by deed 18323 of 17.1.1913 (P45) attested by G. J. Abeysekere, transferred their interests to Suramba Veda, who by deed 33340 of 13.3.1917 (P46) attested by Y. K. B. Seneviratne transferred it to Ukku Banda, who by deed No. 33827 of 25.6.1917 (P47) attested by Y. K. B. Seneviratne transferred it to T. B. Boyagoda.

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No. 17 Plaintif's Evidence C. W. Peiris' Examination -Continued.

One Colahela Lokukumarihamy being the owner of land A18 which is depicted in plan 1077 marked (Y) transferred by deed 85 of 22.12.1867 (P48) attested by D. J. A. Siriwardane, a half share to E. Medduma Kumarihamy. On the same day by deed 86 (P49) attested by the same 10 notary, she transferred the other 1/2 share to Loku Banda, Ex-korale.

Medduma Kumarihamy by deed No. 2936 of 23.10.1882 (P50) attested by D. A. Charles Perera, transferred two amunams to H. A. W. Molligoda, who by deed No. 30369 of 22.11.1898 (P51) attested by D. C. Appuhamy, transferred his interests to D. W. M. Punchi Banda, Korale, who by deed 4424 of 30.11.1903 (P52) attested by G. J. Abeysekere transferred it to H. N. A. W. Loku Banda, who on P24 transferred it to Wereke Dharmaratana, who by deed P25 transferred it to Sumangala, who on P26 transferred to T. B. Boyagoda.

The title passed on deed 86 (P49) to Loku Banda, Registrar, who by deed 3403 of 10.2.1888 attested by Y. K. B. Seneviratne-(P53)pleaded by defendants in paragraph 17a of the amended answer of 21.11.1950 transferred it to Somananda Unnanse. I produce extract P20 folio 182 carried forward to C.8 folio (2), carried forward to C.22 folio 205, C32 folio 172, C72 folio 385 marked (P54) being the registration of land A.18. The first deed was registered in 1875. I produce extract CI folio 359 (P_{55}) showing the registration of the deed pleaded by the defendants (P_{53}) in 1888 in an entirely different and later folio. Land B2 was at one time owned and possessed by D. Sirimala, who by deed 6189 of 7.4.1881 (P56) attested by D. P. Jayasekera, N.P., transferred it to D. Dantuwa, who by deed 25279 of 23.11.1911 (P57) attested by Y. K. B. Seneviratne 30 transferred it to P. D. Surangani, who by deed 32890 of 16.12.1916 (P58) attested by Y. K. B. Seneviratne transferred it to T. B. Boyagoda.

One E. M. Loku Banda Lekama being the owner of lands B6 and B7 transferred them by deed 2649 of 2.4.1898 (P59) attested by W. A. M. Perera to A. W. Mudalihamy, Village Headman, who by deed 13965 of 3.12.1915 (P60) attested by D. G. Fernando transferred it to D. A. Mudiyanse, who by deed 1468 of 7.4.1919 (P61) attested by S. G. R. Wijewardene transferred them to T. B. Boyagoda.

Boyagoda became entitled to land BIO by deed 1010 of 20.12.1018 40 (P62) attested by D. C. R. Wijewardene. The vendors on P62 refer to deed 9001 of 30.5.1895 (P63) attested by Y. K. B. Seneviratne.

Myself, Craib, Callander, Ferdinando and De Mel obtained also deeds for the other shares of land B10. I produce those deeds—113 of 14.8.1925 (P64) attested by A. D. Rafael, 115 of 19.8.25 (P65), 129 of 3.9.1925 (P66), 242 of 16.8.1926 (P67) all attested by A. D. Rafael,

No. 17 Plaintiff's Evidence C. W. Peiris' Examination —Continued. One W. M. Dingiriappuhamy was the owner of land B1. He by deed 8494 of 5.11.1894 (P68) attested by Y. K. B. Seneviratne transferred it to A. A. Kawrala, who by deed 2756 of 2.7.1913 (P69) attested by H. S. Manchanayake transferred it to H. Kusalhamy, who by deed 32758 of 1.12.1916 attested by Y. K. B. Seneviratne -(P70) -- transferred it to T. B. Boyagoda.

This estate was surveyed in 1925 and 1926. Lot 103 in plan 1304 has been shown as planted in tea at that time. It contained tea-seed bearers. There was a title plan in respect of that—No. 312359—which I produce marked (P71). I knew the time the estate was planted in tea. Schedule A forms part of Ambulugala division of Kempitikande Group. The entirety of Ambulugala division was planted in tea—in extent 150 acres, in the year 1927. There were reserve lands also. When I speak of the lands in schedule A, it includes land A18 also. It was also planted in tea at the same time. A18 is some distance away from the main block. I produce letter dated 1.2.29 (P72) from my Agents, Lewis Brown & Co., Ltd. to myself. Reference is made there to the season 1927 and to Ambulugala 150 acres new clearing. I also produce the accounts (P73) which were sent with that letter. In that letter the new clearing refers to all the lands claimed by the plaintiff in this case. It refers to schedule A including land A18.

A. P. Craib was in 1931 a co-owner of this land. He is now dead. A. P. Craib was a co-owner with me of this land in 1931. There was a proposal with regard to a floatation of a Company. A. P. Craib wrote to me. He wrote to me in the ordinary course of business, in connection with the premises in dispute. The proposal was to include the premises in dispute also in the floatation. I knew Craib since 1925. I am familiar with his handwriting. He had been a co-owner with me till 1946. He is now dead. I produce a letter dated 2.11.1931 written by A. P. Craib to me. (Objected to. Admitted subject to objection. It is **30** marked P74).

(Adjourned for lunch).

Intd. N. S.,

D.J., 20.8.51.

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Trial resumed

C. W. PEIRIS, recalled, sworn, FURTHER XD :-- A limited liability company was to be floated. It was to be **inclusive** of the premises in dispute. The case against Boyagoda there referred to is D. C. Colombo case 19983 (P18). I had also the estimates, which I produce (P75) made by A. P. Craib and sent to Bois Bros. (Objected to. I uphold the objection as the document sought to be produced does not bear any signature or initial to show that it was made by Mr. Craib or anyone). At the meeting we considered the estimates for 1932. We made provision for plucking tea from 150 acres of Ambulugala division. The 150 acres included the lands in schedule A of the plaint. The lands in schedule A is 43 acres approximately. In my estimates I provided for income from 150 acres of Ambulugala tea. The area in young tea was 151 acres at Yatimahana. The Yatimahana tea was planted in 1929.

The proposal to make a floatation did not materialise. Bois Bros. prepared a prospectus in 1932. A copy of the prospectus was sent to the plaintiff. I have summoned Bois Bros. to produce the original. The copy sent to me is P75. (Objected to. ORDER—I allow the document, but I will consider the objection when the original is sought to be produced).

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In 1933 Bois Bros. as Agents made the returns for the purpose of the Tea Control. My Tea Control No. was T.Z.107. I produce a copy of the Estate Return dated 3.8.33 (P76). The return shows—fully planted in tea 150 acres over 5 years. That is the Ambulugala division tea. It also shows—over 3 years, 151 acres of Yatimahana division. On 21.9.33 a report from Mr. R. P. Corton, a copy of which I produce, was sent to the Tea Controller. (Objected to. I uphold the objection).

I produce a special assessment for the year 1933 to 1934 (P77) which gave me coupons for 151 acres over 3 years and 150 acres over 5 years. 150 acres is Ambulugala and 151 acres is Yatimahana. I was dissatisfied with the assessment, and my Agents appealed. I produce the statement of appeal giving the date of posting as 14.10.33 (P78). The appeal was supported by two reports—one by a gentleman sent by the Department and the other by a gentleman sent by us. Mr. Willie. Hermon was sent by Mr. Craib. Mr. A. D. Titmus was sent by the Department. I produce report dated 19.7.31 made by Mr. Hermon (P79). (Admitted provided Mr. Hermon who made the report is called). I produce the report sent to the Tea Controller by Mr. A. D. Titmus. (Objected to. I uphold the objection). I produce a certified copy of the petition of appeal to the Executive Committee of Agriculture and Lands (P80) dated 16.7.34. (Objected to. The document is admitted).

Mr. A. P. Craib was the person acting for all the co-owners at that time. I produce letter dated 18.7.34 by which 8 copies of that petition were circulated to the Agricultural Committee (P81). As a result of that application all that we asked for was granted. In 1936 I got another valuation of this estate. For that purpose I got a valuation from Mr. Gordon-Fellowes. The original of the valuation is with Bois Bros. I have a copy of that valuation. At that time I was in possession of the 150 acres of tea in Ambulugala division. The floatation was for three 40 groups—Kempitikanda, Leuke and Barrington. These blocks in dispute are situated in Ambulugala between Leuke and Karandupona Estate. In 1938 this estate had to make a return to the Department of Labour, because it had immigrant labour. I produce a copy of a letter dated 6.11.36 to Bois Bros. from the Department of Labour in respect of Kempitikanda Estate return (P82). (Objected to. Admitted on the Counsel undertaking to call the Officer from the Labour Department).

No. 17 Plaintiff's Evidence C. W. Peiris' Examination —Continued. No. 17 Plaintiff's Evidence C. W. Peiris' Examination —Continued.

The Labour Dept. sent letter dated 12.12.38. I produce a copy of it. (Objected to. Objection upheld). I got another valuation of this estate made in 1942. There was a proposal for my wife to acquire the remaining shares of Kempitikanda from the other co-owners. That valuation was made by Mr. Hermon. I produce a copy of that valuation dated 1.2.42 (P83). Just before I purchased the estate I wrote to the Superintendent of the estate on behalf of my wife. I wrote to him for details. I received from him letter dated 5.6.44 which I produce (P84). I have been familiar with this land and my Agents have had possession of the block in dispute from 1931 till 1945.

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I got a monthly report from Bois Bros. I produce the December Report for 1942 (P85,) for 1943 (P86) and for 1944 (P87). On those reports there are the acreage statements. When I found that defendants were in possession of a certain portion of the land, I got my wife to write to the 2nd defendant. I produce the letter dated 2.8.47 (P88). The lots they were seeking to open were the lands in schedule B. Plaintiff wrote again on 19.8.47 letter (P89) inviting attention. Again plaintiff wrote on 1.9.47 letter (P90) inviting attention. On 8.9.47 plaintiff received letter (Poi) from the 2nd defendant. In reply to that plaintiff wrote on 16.10.47 (Po2) a letter to the 2nd defendant. Plaintiff again wrote Po3 on 20 6.11.47 drawing attention. On 25.10.47 2nd defendant wrote to plaintiff letter P94. In reply to that plaintiff wrote on 10.11.47 letter P95. 2nd defendant replied on 22.11.47 by letter P96. Plaintiff wrote again on 25.11.47 letter Po7. 2nd defendant's husband is a Medical Officer. He was stationed in Kegalla from 1943 to 1945. I did not get a reply to P97. Plaintiff again wrote on 3.1.48 to 2nd defendant letter P98 drawing attention to the earlier letter. She received no reply. On 18.2.48 plaintiff wrote again to the 2nd defendant P99. The letter was sent under registered cover. On the same day plaintiff sent to 1st defendant a letter which I produce marked (P100) with which was sent the copies of all the correspondence 30 I had with the 2nd defendant. I did not get a reply to that letter also. In the meantime I took the matter up with the Tea Control Department. I produce a certified copy of the extract from the Register of Estates for Uduwewela Group 1933-34-Registered No. T.Z.III (PIOI). It is dated 5.11.47. I produce the extract from the Register of Estates for 1946 to 1947 for the 1st defendant's estate (P102). (P101) gives the acreage as $84\frac{1}{2}$ acres and (P102) gives the acreage as 71 acres, 2 roods, 3 perches. Thereafter on 6.3.48 I wrote to the Tea Controller letter (P103). On 11.3.48 I got an acknowledgment from the Acting Tea Controller (PI04). Thereupon I wrote on 7th May, 1948 letter (PI05) to the Tea 40 Control Inspector at Kegalla. With that letter I sent a detailed statement in which I set out in detail the title. An inquiry was held. Then I wrote again on 13.8.48 letter (P106) to the Tea Control Inspector at Kegalla in which I referred to the encroachment by the defendants. I received on 28.3.49 (P107) a letter from the Tea Control Department. 43 acres were reduced from me on the footing that that portion was in the possession of the defendants. Thereafter I filed my plaint on 3.8.49.

There was at no time a resident superintendent on Ambulugala Division, not even on Kempitikanda Estate. They were all looked after by Mr. A. P. Craib from Ratuapura and later by Mr. H. C. Rodale from Yatideriya Estate, Undugoda. All this was after 1931. At the very beginning J. G. Craib from Karandupona really planted the estate. A. P. Craib looked after it about 1932 or 1933. Thereafter Mr. Rodale looked after the estate till plaintiff purchased it.

The defendants pleaded in paragraph 26 that lands A2 and A7 are not in their possession. They pleaded an alternative title from Paragraph 27 and the following paragraphs. In paragraph 27 they pleaded the title 10 conveyed to Boyagoda by K. R. Karuppen Chetty on deed 367 of 15.8.20, which I produce as (P108). That is the basis of their title. All the lands in the schedule to the deed are in Uduwewela except No. II which is at Polwatta, for which I produced the plan P71. The lands in schedule A are in Polwatta, except for one or two. Between Uduwewela Village and Ambulugala Village there is Polwatta. Polwatta, Uduwewela and Ambulugala Villages are shown in the 16-chain diagram 1/24/3B (P109) and 1.24/4A (P110). The first title deed in defendant's chain (P108) contains 26 allotments which are described as Uduwewela Estate, and some other 20 lands. The 9th and the 17th lands are bounded on the north by Polwatta Village boundary. There is not a single land which adjoins Ambulugala. The 26 allotments are collectively described and the northern boundary is given as lands claimed by villagers and Ambulugala Village boundary. It should be Polwatta Village boundary.

By mortgage bond 369 Karuppen Chetty, the vendee on P108, mortgaged the land to two Chettys Letchiman and Muttiah. They put the bond in suit in D.C. Colombo case 6313. I produce the plaint (PIII), Decree nisi (P112) and Decree Absolute (P113) in that case. There was a sale by Court and Court conveyance No. 492 of 10.12.25 (P114) conveyed title to two Chettiars, who transferred by deed 1377 of 1927 to one D. James, who by deed 380 of 21.6.27 (P115) conveyed his title to D. R. Senanavake, who by deed 1065 of 18.1.28 (P116) conveyed those interests to 1st defendant. P116 refers to the 26 allotments of land which are referred to in the original deed. PII6 refers to Uduwewela Estate in extent 85 acres, 2 roods and $11\frac{1}{2}$ perches. The northern boundary is given as Ambulugala Village limit. It is not correct. It should be Polwatta Village boundary. On PII6 Ist defendant applied for an investigation with a view to a settlement of the land on her, to the A.G.A., Kegalla, on 26.1.29. She claimed Uduwewela Estate to be approximately 55 acres 40 and gave as her title deed (PII6) and earlier deeds. I produce that application for a settlement (P117) made by 1st defendant to the A.G.A., Kegalla, in which the applicant has stated that she had possession for approximately over one year. Attached to that is a sketch. In PI17 the 1st defendant has referred to P116 as her title deed, and to the plan. By deed 1046 of 9.8.36 P118 1st defendant transferred to 2nd defendant a half share and refers to the schedule as Uduwewela Estate of 85 acres, 2 roods and 111 perches. P116 was executed on 18.1.28. On 8.2.28 the

No. 17 PlaintifI's Evidence C. W. Peińs' Examination -Continual.

transferors executed a deed of rectification which I produce PII9— No. 31811 attested by D. G. Fernando, N.P. (PI19 read out). The schedule in PI19 does not make any reference to any plan. PI19 had already been executed at the time of the application for a settlement by 1st defendant. I produce the encumbrance sheet showing the transfer to the 2nd defendant—C.242/290 (PI20) which shows that deed I046 (PI18) was registered on 31.8.50 after this case was filed. I also produce encumbrance sheet C.140/259 (PI21) which shows that the deed of rectification PI19 was registered on the 13th July, 1937. I also produce extract from the Day Book (PI22) which shows that the deed was handed in by M. S. Fernando, N.P. He is 1st defendant's husband and 2nd defendant's father.

The plaintiff claims damages Rs. 11,739/- for two years. I estimate a yield of 390 lbs. of made tea per acre per annum. Tea costs much more than Rs. 1000/- an acre for planting and maintaining.

Intd. N. S., D.J., 20.8.51.

Intd. N. S., D. J.,

Further hearing tomorrow, 21.8.51.

Appearances as before.

21.8.51.

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C. W. PEIRIS, recalled, sworn:

FURTHER XD :—I produce deed 870 of 31.1.1920 (P123) attested by J. A. Perera, N.P., referred to in P19.

XXD :--- I am acting in this case for the plaintiff (Mrs. Peiris). I referred to certain correspondence which plaintiff had written. Those letters were written for her by me. In giving instructions for this case to my Proctor, it was I who gave the instructions. I was present at the survey but the plaintiff was not present. I acted on her behalf at the survey. At a certain time on P2 of 1925 I myself had certain interests in this property. I conveyed my interests to my wife, the plaintiff, on P7 of 1929. In regard to the management of the estate, plaintiff took an interest in the property. She took all the interests which an owner would take, but in regard to the management I was acting on her behalf. I know very much about this estate and everything connected with it more than the plaintiff. I do not know whether plaintiff will be giving evidence in this case. I conveyed my share to plaintiff for a consideration of Rs. 30,000/-. No money was paid on the date of the execution of the deed. I cannot remember whether I took that money in one sum or in portions. I had taken Rs. 30,000/- from the plaintiff earlier and for that consideration

C. W. Peiris' Cross-Examination

I transferred my share to her. I incurred that liability to her shortly after 1918. I had used up the money which she had received as dowry from her parents. I expended that money from time to time. I might have got that amount of Rs. 30,000/- in two portions of Rs. 10,000/and Rs. 20,000/-. The first sum of Rs. 10,000/- was given on the date of our marriage in 1018 and the second sum of Rs. 20,000/- a few years later, between 1920 and 1923. That sum was given to me for safekeeping. I had used that money. I used the Rs. 10,000/- almost immediately after I got it and the Rs. 20,000/- some time in 1925. Subsequent to 1925 up to 1929 I had not repaid it. Both of us, plaintiff and myself, gave instructions to the Notary to write the deed in my wife's favour. I do not remember having told Mr. J. A. Perera that the execution of the deed was for the money I had received from my wife earlier. I could not have told the notary that I received the money earlier from my wife, as the attestation on the deed states that no consideration was paid in the presence of the notary. I know that where a party has been paid money earlier, the notary is informed that consideration is acknowledged to have been received. My wife was worried about her money. It did not occur to me to mention to the notary that I was transferring the properties for the debt. It is not correct to say that my wife is only a nominee on my deed of transfer.

The others who joined with me in the deeds P14 and P15 to my wife were Mr. Craib, Mr. Callander, Mr. Ferdinando, Mr. A. C. de Mel, Mr. Rodale, Messrs. C. J. and J. Strachan, Mr. P. M. Ondaatje and Mrs. De Mel. Mr. Craib is dead. So far as I am aware none of the other vendors have been cited as witnesses. (Mr. Perera states that he will not be calling the plaintiff or any of the vendors on P14 or P15).

Mr. P. M. Ondaatje is alive. I am not calling Palaniappa Chetty or Karuppen Chetty. They are not present in Court, so far as I am aware. Mr. D. A. R. Senanayake is alive. He is not on our list. Mr. H. W. Boyagoda is dead. I think T. B. Boyagoda is also dead

Yesterday I produced a number of deeds from certain persons who had conveyed to T. B. Boyagoda certain interests, some of which they had bought from others. So far as I am aware, I am not calling any of those persons. The Proctor for plaintiff has asked me what evidence I have for this case. My Proctor and I discussed as to the nature of the evidence that is necessary. I have told my Proctor what evidence I have to support my case. From that evidence which I told I have, witnesses and documents have been selected.

40 I myself own property valued at about Rs. 50,000/- or Rs. 60,000/or even more. Apart from shares, I own other properties close upon a lakh of rupees. I own properties in Kegalla and in Moratuwa. I own Godapola and Panakawa in Kegalla District. They are 171 acres in extent planted in rubber. Those properties are in the name of the Ceylon Plantations and Foreign Agencies, Ltd. It is not correct to say that I do not own any immovable property in my name. I own property in my name in Moratuwa. I do not own any immovable property in

No. 17 Plaintiñ's Evidence C. W. Peiris' Cross-Examination —Continued.

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No. 17 Plaintiff's Evidence C. W. Peiris' Cross-Examination —Continued.

my name in Kegalla. I know the difference between a limited liability Company and a personal property owner. I own 50 shares of Rs. 100/each in my name in that Company. That is all I own in Kegalla. In Moratuwa I own a house-property and another property both of which are worth Rs. 15,000/-. I do not own any other property. I have done business from time to time. First I did business in plumbago, then some export business in tea; I had desiccated mills and a mill to produce edible oil, and I was having a Brokering firm under the name— De Mel and De Mel. I was for a short time Ceylonese Broker of R. Gordon & Co. I did brokering business from 1925 to 1935. Two or three years after that I joined R. Gordon & Co. and I was working with them for about an year or so. After that I was interested only in planting from 1938. From 1938 up to date I have taken interest in no other form of business except planting. That was in regard to estates in Kegalla-Kempitikanda Group and Godapola and Panakawa estates. As far as I can remember, I have not done any other business other than planting after 1935. I have speculated in buying and selling rubber and tea coupons, from 1939 to 1941 or 1942. I did that business not on a very large scale. I did it on a moderate scale—about Rs. 30,000/- or Rs. 40,000/- a month. There was an action against me for not paying a claim by one of the parties who had transactions with me. That action was dismissed. I lost it in the District Court and won it in appeal. I read the judgment of the District Judge and the judgment of the Supreme Court. I gave evidence in that case. The claim against me was Rs. 21,000/-. The District Judge found that the money was due. The Judge disbelieved my evidence on the facts. In the Supreme Court I won the case on questions of law and facts. Justice Soertsz wrote a very short judgment which contained nothing but abuse. I was the defendant in that case. (Portions of S.C. judgment read out from 50 N.L.R., 409). I do not know whether Mr. Justice Nagalingam did not accept my evidence on the facts.

Mr. de Mel is my brother-in-law. I did business with him for about a year. Apart from that case I had about 3 or 4 other civil cases. Apart from this case there are a number of encroachment cases in this Court filed by plaintiff, where the plaintiff claims different blocks of land which she says different people are claiming. Those are blocks from the same Kempitikanda Estate.

I first came to know Kempitikanda Estate in 1924. We got the deeds in April, 1925. I came to know the property towards the end of 1924. Before that I did not know the property at all. About 217 acres rubber in Kempitikanda division had been planted then and there was an isolated extent of 30 acres, of which 5 acres were planted in rubber, at Moderatenna. The whole extent—the unplanted and planted land formed one estate. The unplanted extent was about a few hundred acres—about 200 acres. The unplanted extent was in jungle and chena. The rubber block of 217 acres is outside this case. The block I now claim was then either jungle or **chena**. The figure of 217 acres is given

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in the earliest monthly reports that we received from our Agents. Working from the description given in the deeds, I said about 200 acres are unplanted.

When I and my co-owners bought on P2 of 8th April, 1925 and P4 of 1st April, 1925, there was no plan attached to the conveyance, and we made the plan after we bought the estate. We did not ask for a plan from the vendors. It did not occur to me to ask for the plan. On the conveyance P2 the consideration was Rs. 180,000/-. The consideration was for Rs. 115,000/- but there was a primary mortgage of the property for Rs. 65,000/-. On P4 the consideration was Rs. 5,000/-. They were 10 nominal considerations. The consideration was not actually paid. Senanayake did not give the land for nothing. The transaction on P4 was actually with H. W. Boyagoda, whose nominee D. A. R. Senanayake was. When I got P4 in my name we gave Mr. Boyagoda two lands out of the 5 lands we bought from the Chetty on P2. It is safe to have a plan for a conveyance. When I agreed with the Chettiars I was negotiating to get assistance from Craib and Callander to complete the transaction. I asked Craib to inspect the land and value it, and they were satisfied with what we were buying. Therefore I did not take the trouble to ask 20 for a plan and delay the transaction. I considered the price reasonable and did not care to get a plan. We bought a number of allotments of lands, many of which were undivided shares of chenas. P2 contained 5 schedules, the first of which were 78 allotments, the second 183 allotments, the third 3 allotments, 4th 92 and the 5th 33 allotments, and practically all of them were described as chenas.

I went to the land at the end of 1924. I did not walk through the land. I had a very casual visit to the land. That was of Kempitikanda group. I saw what I could see from the road of Utuwankanda. From what I saw I could not distinguish one chena from the other.

The land in dispute in this case is in Utuwankanda Estate. It was not planted at that time, in 1925. It was jungle and chena except for a few small blocks planted in tea, in extent about 10 or 12 acres. Those blocks are also in dispute in this case. One block in extent about 2 acres of that amount is in dispute in this case. I cannot say whether the remaining planted portion forms part of this corpus or not. I was told that about 10 or 12 acres were planted at that time. I did not personally see whether any portion was planted in 1924. In 1924 there was no building on Utuwankanda Estate. The total extent of Utuwankanda Estate is 262 acres or so. It is all in tea. A small house was put up 40 after we purchased the land, to be used by the Kanakapulle on Utuwankanda. It is still there. The co-owners of the Syndicate did not put up any other building. That house is outside the area which is in dispute in this case. In the area in dispute the co-owners with the plaintiff put up no building at all. There are buildings now-three small houses. Of these at least two houses have been put up by the 1st defendant. They are cadjan houses of mud and wattle. The kanakapulle's house is also a temporary building, which is a little better.

No. 17 Plaintiff's Evidence C. W. Peiris' Cross-Examination —Continued.

I produced yesterday three monthly reports of Kempitikanda Estate—P85, P86, and P87. P85 is for December, 1942, P86 is for December, 1943 and P87 is for December, 1944. There were books in regard to Kempitikanda Estate. The books must be with the Agents. I have every reason to think that the books are available. They are not in my custody. They were with the Agents. The Agents are Messrs. Bois Bros. & Co., Ltd. They are not my Agents now. They ceased to be my Agents in 1946 or 1947. When they ceased to be my agents, I asked for the books and they said they would be sending the books to our then Agents, Messrs. Aitken, Spence & Co. Aitken Spence & Co. are not now our agents. They were agents from 1947 to 1950. I know that the books had been sent by Bois Bros. to Aitken, Spence & Co. When Aitken, Spence and Co. ceased to be the agents I did not take the books from them. They were not necessary for me. When Bois Bros. were the agents I sent the books to them. When they ceased to be the agents and Aitken, Spence & Co. became the agents, they (Bois Bros). sent the books to Aitken, Spence & Co. to be held at the disposal of Bois Bros. When my wife asked for the books, Bois Bros. said that we could get the books from the agents—Aitken, Spence & Co. I had some correspondence regarding the books with the agents. I saw the books with Aitken, Spence & Co. when they became the agents. When Aitken, Spence & Co. ceased to be the agents, I did not ask for the books from them. I do not know whether or not Aitken, Spence & Co. returned the books to Bois Bros. I did not ask for the books from Aitken, Spence & Co. after that. Since I got all the documents that I wanted from Aitken, Spence & Co. when the books were there, I did not go any further in this matter. I got some correspondence and some monthly reports which I wanted for this case. I do not know where the books of Kempitikanda are at the moment. I did not remove the books from Bois Bros. at any time.

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The lands in dispute in this case fall within the Ambulugala division. The books show the respective divisions. There were Kempitikanda, Yatimahana and Ambulugala divisions.

Separate accounts were not kept for separate divisions. The books and the documents show the separate divisions. The books should have shown the expenditure for clearing and opening up each division, but they do not show that. The books were kept showing the opening up and the clearing and the planting from 1925 till 1932. The books relating to the opening and the **clearing** of the land from 1925 to 1932 are not available. As far as I am aware, they are not available.

On an estate there is the Check Roll, subsidiary books for various works, rice books, maternity benefits books and other books relating to labour population. A book is kept for weeding, contractors' books, etc. Entries for each division are separately kept. In this case some of the divisions are IO miles away from each other.

The Ambulugala division is one separate block. The next division is Yatimahana, about 6 miles away. Separate books must have been kept for Ambulugala division. When the agents send me the monthly reports I scrutinize them.

They contained the accounts. I went occasionally to the divisions. I went about 5 times in the earlier part and more than once a month after my wife's purchase. Between 1925 and 1946 I went 4 or 5 times and after 1946 I went several times a month. Between 1925 and 1946 I did not go more often because there was an agreement between the co-owners that 10 the working and management of the estate should be in the hands of Mr. Craib and Mr. Callander. The monthly reports were sufficient for my purpose, along with the annual statement of accounts. From that I could gather how each division worked. Different people were in charge of different divisions. I was not concerned with the work of the subordinate staff but I was concerned with the profit which each division brought. (Shown P85). The estate was worked as one unit and not as separate divisions. It may be that I have said that by looking at the monthly reports I could give details about each division. The monthly reports do not make reference to each division in respect of each matter, 20 except the acreages of the different divisions. (Shown P85). It shows the acreages of the different divisions but the working is shown as one. In P85 and all other monthly reports the acreages are shown separately for the three divisions. The rubber division is also given separately and the rubber crop figures are given separately. By looking at P85, P86 and P87 one cannot say what the particular work or the particular production of the Ambulugala division was, or the income or expenditure. P84 separates Ambulugala division from the other divisions. (P84 read out). Mr. Rodale is on my list of witnesses, but he is in England and he will not be available. (Mr. Weerasooriya at this stage states that he objected to the production of P84 when it was produced but that the objection had not been recorded. His objection was on the ground that

the writer must be called).

(Mr. Perera states that he has a clear recollection and that he and his juniors and his Proctor, who were present in Court when P84 was produced, clearly recollect that no objection was taken to P84 when it was produced).

(Shown P84). It refers to a letter of Mrs. Peiris of 2.6.44. I have a copy of that letter. In P84 the figures are taken from the books of Kempitikanda Group in 1944. Those books may be with the agents.

Apart from P84 I personally have no other document to show that Ambulugala was worked as a separate division. I have already P72 and P73 to show the date of clearing of Ambulugala division. P72 refers to new clearing on Ambulugala division. (P72 read out). (P73 read out). (Shown P73). (Witness points to the amended balance sheet—the items "new clearing account" as per balance sheet.....further expenditure.....). P73 does not state that it refers to Ambulugala

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No. 17 Plaintiff's Evidence C. W. Peiris' Cross-Examination -Continued.

division. The figure 27,980/90 in P72 representing expenditure on Ambulugala must have been taken from a book. That book is not available to me. Apart from P72 and P73 and the valuation reports and monthly reports I produced, I have no other documents to show details about Ambulugala division.

(Mr. Weerasooriya states that the translation produced by the plaintiff for P119 is not correct and that he wishes to produce his own translation for the document. I allow him to do so). (P79 read out). I did not go round with Mr. Hermon, but Mr. Craib appears to have gone with him as would appear in the document itself. The statement about the extent in P79 must have been made by Mr. Craib. No plan may have been shown 10 to Mr. Hermon. Actually we had no plan in existence at the time showing the planted areas. According to P79, Ambulugala division appears to have 150 acres planted in 1927.

The total extent of Ambulugala division is 262 acres but the total planted area is 150 acres.

Utuwankanda Estate is called Ambulugala division of Kempitikanda Group. There is no rubber on Ambulugala estate. That fact is stated in P72. It must have been common knowledge among the co-owners that 150 acres had been planted in 1927-of Ambulugala division.

Kempitikanda division is shown as 151 acres in P79. That is the tea area, which is really Yatimahana division of Kempitikanda. The figure 151 acres must have been taken from some books. Mr. Hermon wrote the report. He must have got that information from Mr. Craib. I have no books to show how the acreages were arrived at.

> Intd. N. S., D. J., 21.8.53.

Further trial on 24.8.51.

30 Intd. N. S., D. J.

Vide proceedings of 21.8.51.

24.8.51

Appearances as before.

C. W. PEIRIS, recalled, sworn:

FURTHER XXD :--- A notice was served on me to produce two plans Nos. 328 and 329 referred to in the deed of sale (P16). It is not correct to say that plan No. 328 referred to in the deed of sale (P16) depicts the block that Mr. Ferdinando took. Plan No. 328 is not the plan that was referred to in connection with the land taken by Mr. Ferdinando. The

only deed of Exchange which was executed was between Mr. C. E. Perera and Mrs. Lakshmi Gunawardene on one part and the plaintiff on the other part. Lakshmi Gunawardane is Ferdinando's daughter. A notice was issued on me to produce plan No. 1304 (P17), and plans Nos. 328 and 329. Plan P17 and Plan 329 were produced for inspection by my Proctor. In regard to plan 328 I took up the position that it refers to an extent of rubber of Kempitikanda group and that it does not cover any portion of the land in suit. This plan is not in my custody. (Plan 329 of 18.7.45 is now marked P124).

All the plans produced in the case are to be proved by calling the surveyors, except in the case of P124. P124 does not cover any part of the blocks in dispute in this case. Neither plan 328 nor plan 329 refer to any portion of the blocks in dispute.

In my evidence I produced P109 and P110. (Shown P109 and P110). To go to the land in question from Colombo, one goes along the Colombo-Kandy road and about 1/4th of a mile from the Church at Mawanella one turns to the right, on the Colombo side. The road which branches off from the Colombo-Kandy road is called the Ussapitiya road. There is no motorable road to the estate. You come along the Ussapitiya road

- 20 till you come to a bend at Dehimaduwa, and you walk along by a footpath. Originally it was a footpath, but about three years ago it had been broadened, but you cannot take a car. Then you go towards the west and get into Ambulugala division. In P17, when you go to the west there is an ela. The footpath is just above that ela, and just below the lot marked 374781, and you go along that path to the estate. That is the usual road to the estate. The block which Mr. Ferdinando got is between the Colombo-Kandy high road, the Ussapitiya road and that footpath. He also got lot 374781 and lot 87 to the north of the footpath. The Walakadayawa ela is shown in P17 at a bend towards the Colombo-Kandy
- **30** road before you get to the turn-off to Ussapitiya. The lands I claim in this case-those in schedule B-are to the south of the ela which is to the south of the footpath I referred to. Those in schedule A are very much further away to the south. The distance between the lands in schedule A and the lands in schedule B is about half a mile. Land No. 18 in schedule A is still further away. (Shown P100 and P110). In them certain villages are marked. As to how the Village limits were located in P100 and P110 I do not know, and I am not in a position to say whether they are accurate or not.

When I was giving evidence, my Counsel referred to plan P17 and also to the schedule in my plaint. In Schedule A to the plaint land AI 40 is Udakeyedeniyehena. In my evidence I said I identify AI as lot 106 in P17. I did so by reference to the boundaries given in the deeds. In the case of AI in schedule A, only the southern boundary was identical as in the plan, and also the western boundary, and as given in P15. Land AI is in schedule BI of PI5. The boundaries of land AI as given in the plaint are identical with the boundaries as given in schedule BI of P15. The boundaries in both schedules in the plaint tally with the

No. 17 Plaintiff's Evidence C. W. Peiris' Cross-Examination -Continued.

No. 17 Plaintiff's Evidence C. W. Peiris' Cross-Examination — Continued.

boundaries in the deeds. I gave the boundaries as given in the deeds. The eastern boundary for AI is the limit of the hena belonging to Bamunusinghe Mudiyanse people and the limit of Aluboattehena. The eastern boundary of lot 106 in P17 refers to Aluboattehena, which is lot 104. I came to know that from the index given in the plan P17. I do not know where the hena of the Bamunusinghe Mudiyanselage people is. The southern boundary of AI in the plaint is the Village limit of Uduwewela. In P17 that Village limit is not marked as the southern boundary. In P17 the Village of Uduwewela is shown further to the west of AI. Nowhere in P17 is there anything to show where the Village limit of Uduwewela is, but in the Commissioner's plan filed of record marked (X), the Village limit is shown. (Plan X shown to witness). Lot 106 in P17 corresponds to lot 27 in plan X.

The western boundary of AI in the deed is Bakmiange Hena and purana belonging to Bamunusinghe Mudiyanselage people. In P17 lots IOI, IOO and IO2 are those lands belonging to these people, described as the western boundary. I say so because these details are given in the index to P17. Lots IOO and IOI in P17 are given as Pitapurana hena. I do not know how they got that name. Lands A2 and A4 correspond to lot IO9. The eastern boundary of A2 is stated in the schedule as Iura. I do not know what is meant by Iura. I did not take the eastern boundary into consideration in identifying lot IO9.

The southern boundary is the hena of Ukku Banda. I cannot identify that. I understood that A2 forms the northern part of lot 109 while A4 forms the southern part. I say that A2 forms the northern part because it bears the same name as the northern part of 109. The northern boundary of A2 is the mala ela. I believe that there was a mala ela, but I cannot be definite about it. A mala ela is an ela that no longer exists. I am able to identify these lands myself. I told the Court that when I first went to the land, part of it was planted and part was in chena, and that I could not distinguish between one chena and the other. That was in 1924. I came **to know** the distinguishing features of the chenas when I went to the land with the Commissioner to represent the plaintiff for the purpose of this action—when plans X and Y were made. That was in 1950. Up till that time I had not endeavoured to identify any one of these chenas.

I knew about the mala ela on information. It was Mr. Frugtniet, surveyor, who gave the name to me. By looking at the ground he formed the impression that there was a mala ela there. I was present at the time. There was no other material regarding the mala ela.

For AI in the plaint the name given is Udakeyedeniyehena, as in the deed, but in 106 of P17 the name given is Wawulbulanehena. In some cases the names are taken by the people on the spot and some are those by which the lands are popularly known to the people. The person who made plan P17 gave that information. I do not know that somebody gave the surveyor, Mr. Thiedeman, the information about the name of

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lot 106, but I have every reason to think so. I was not present when Mr. Thiedeman made the survey. I do not know who gave him that information. I have not given to my Proctor the names of any persons who gave Mr. Thiedeman any information.

No. 17 Plaintill's Evidence C. W. Peiris' Cross-Examination --Continued.

I identified the eastern boundary of lot 106 as Alubowelawattehena because it has 104 on the east, and in the tablet to P17 the name Alubowelawatta is given. As to how Mr. Thiedeman came to give the name Alubowelawatta to 104, I do not know. I do not know how Mr. Thiedeman got all the data in the tablet to P17.

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When I was giving evidence referring to the schedule to the plaint, I was looking at the plan, but I did not look at the tablet. I had studied these things on the spot. For the purpose of identifying these lands. I have been to the lands several times. With regard to A5, I saw the huge rock that is there. Before I went to the land with the surveyor, I went to the land in dispute as soon as I heard that the defendants had encroached on this land. That was between 1947 and 1949 and not before. I went through the land. Then the land was planted in tea. I did not go when the land was being planted. It was Mr. Craib who did the planting. For the purpose of planting, the chena must have

- 20 been cleared. In some blocks, after the land became a tea plantation, there were physical features—like the galenda. There were no other physical features. It was a 25-year-old tea plantation. In 1947 to 1949 I was able to apply the boundaries of the lands given in the schedules, to the lots marked on the plan, and identify them. I correlated it by looking at the boundaries in the deeds, as given in the schedule, the lots in the plan and the tablet to plan P17. There were also Village boundaries, which are physical features. There were stones planted between one Village and the other. That is what the Commissioner told me, and he pointed out certain stones to me. I cannot say how far apart these stones are planted. I saw about 2 or 3 stones. I saw the stones
- 30 these stones are planted. I saw about 2 or 3 stones. I saw the stones somewhere in lot 104 and in lot 109. I cannot remember any other stones.

Apart from plan P17, I have no other plan identifying the blocks in dispute. I think P17 is referred to in schedule F(I) 70 of P15. Plaintiff became the owner of the land in schedule F(I) 70 of P15—at page 81 of the deed. That reference to the plan (P17) is only in respect of that particular lot. The lands in schedule A and B are all depicted in Plan P17. I cannot say why the plan P17 was not referred to regarding all the lands. The lands exchanged between Ferdinando and the plaintiff also come within

40 P17. I do not know why P17 was not referred to in that deed of exchange. According to me, P17 was completed in 1926. After that a number of deeds have been executed in respect of this land. Except the reference in P15, I did not come across any other reference to P17 in the deeds. I do not know why. The notaries would have **thought** that if they referred to the plan, they would have committed the plaintiff and the other parties to take only the lands covered in the plan; because parties concerned knew that there were lands not covered by the plan, which No. 17 Plaintiff's Evidence C. W. Peiris' Cross-Examination —Continued. were purchased. Therefore the notaries did not refer to the plan. Even some of the lands purchased after the plan was made were subsequently depicted in the plan. The plan was brought up to date from time to time. There are two amendments referred to in P17—dated 25.9.28 and 3 and 8.1.1929, and also one earlier in April, 1928. By January, 1929 all the lots which were bought had been surveyed. I do not know whether lands had been purchased in 1930, 1931 and so on. No deeds of purchase have been produced after P2 of 1925.

Q.—I put it to you that your location of the lot in dispute in P17 is pure guess-work ?

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A.—No.

Q.—Was there any material on which these different chenas could have been located ?

A.—No. Except those facts that I have stated.

Mr. Thiedeman was working on the land for 8 or 9 months. I asked Mr. Thiedeman why the plan was not dated. He said it may have been an omission.

The person who attended to all these matters was Mr. Craib. He was an experienced planter and he knew the locality and the land, and his brother, J. G. Craib also helped him. Mr. Callander is also an experienced planter. Mr. Rodale was the Superintendent of Yatideriya Estate, about 30 miles away. Mr. Ondaatje was in Kegalla. Bois Bros. were the agents. Mr. James Strachan and James Allen were S.D's on Lellopitiya Estate. They were Mr. Craib's assistants. They were all shareholders.

They all joined, together with Mrs. De Mel, in deed P15 on 25 and 27.9.46, but they warranted title only to the lands depicted in plans 328 and 329, and those plans did not cover the lands in dispute. That is because after the plan 328 was made, it was discovered that certain portions of the estate had not been surveyed, and I questioned them as to why that was so, and I actually asked them to warrant and defend title on behalf of the plaintiff. In answer to that—after a lot of correspondence—Julius & Creasy explained the position to my wife and they gave the reasons. They were not prepared to warrant and defend title.

P17 was completed in 1929. Plans 328 and 329 were made in 1945 in pursuance of the agreement to sell P14. P14 refers to the fact of plans being made. (Clauses 8 and 9 of P14 read out). Before the question of sale by Craib and others could materialise, it was decided that new plans should be made. What is stated in clause 9 does not mean that they feared as to the extent of the planted area, but it meant—should such a thing be discovered at any stage, the plaintiff was not given the right to withdraw from the sale or to ask for compensation. 75

Q.—Why was there a doubt that there would be a shortage, mistake, error or omission in the extent of the planted area?

No. 17 Plaintiff's Evidence C. W. Peiris' Cross-Examination -Continued.

A.---I do not know.

The plans did not take in the area in dispute, because the surveyor would have found someone squatting on the land at the time the surveyor went. That fact was brought to my notice later on.

Tea is plucked once in two weeks sometimes. Practically weekly there are coolies working on a tea plantation.

This may have happened in 1945. Several people knew that the 10 estate was changing hands. Plaintiff paid Rs. 210,000/- for this land. I did not go round the land as I had confidence in the shareholders. I did not know that somebody else had got into possession of the 43 acre block, at the time of the execution of the deed. The buying and selling of tea coupons stopped in 1942. After that people had to pluck their tea and sell it. In 1942 the 43-acre block would have been in full bearing. I did not notice the shortage of the 43 acres. All the other co-owners also did not notice it.

Q.-I put it to you that you did not either plant or possess this 43-acre block ?

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A.—No. I planted and possessed that block.

The people who remained co-owners were my wife, Mr. C. E. Perera and Mrs. Lakshmi Gunawardene. Another plan was made because C. E. Perera and Lakshmi Gunawardane had a 5/72 undivided share of this land. Unlike the other co-owners, Ferdinando would not sell for cash. We therefore had agreed to give his share in land, in exchange, and that plan refers to the land given to him in exchange for his undivided interests. Mr. Perera-Amarasinghe was the surveyor who made the plan on 1.9.46. Ferdinando got a divided block. Plaintiff got a 5/72 undivided block. Mr. Ferdinando owned 5/72 undivided shares of Kempitikanda Group, consisting of Kempitikanda rubber, Yatimahana, 30 Ambulugala and a share of Moderatenne. In exchange for that he wanted a divided portion, and that block happened to be in Ambulugala division. It would not have been possible for Ferdinando to have given a divided block for his 5/72 undivided shares.

(Adjourned for lunch).

Intd. N. S., D.J., 24.8.51.

Trail Resumed

C. W. PEIRIS, recalled, sworn,

FURTHER XXD:-In plaintiff's original plaint, after describing the 18 lands in schedule A, it is stated lots 1 to 14 correspond to certain lots in Mr. Thiedeman's plan P17. In giving evidence I purported to identify further lots. There were one or two lots which I could not

No. 17 Plaintiff's Evidence C. W. Peiris' Cross-Examination —Continued.

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identify. I identified land A15 with lot 105 in P17. I came to know that while we were looking into the identity of the lots further. I did not look at anything, but I considered the plan, the names, the index and so on. I identified it in that way because the southern boundary in A15 is given as land claimed by natives and Crown land, and on all other sides as land claimed by natives. That is the only lot which has the Crown land on the south. The name of lot 15 in AI is Imbulange Uduge hena alias Dangollehena. The name in the index in P17 is Wawulbulanehena. The names differ. In the note attached to the description of A18, I did not identify lot 105 with any particular allotment. The surveyor went to the land in February and March, 1950. In his report, I stated to him that lot 105 came within the area in dispute. I say that lot A17 is part of lot 104. I may not have referred to A17 in the plaint, though I referred to lot 104. I say that lot 104 is A17 because it is one of the lands situated in Uduwewela Village. The Uduwewela and Polwatte Village boundary runs through lot 104. I identified it after examining the surveyor's report in this case. A17 is Tennepitahena and 104 in P17 is Aluboattehena. I inferred that it must be so.

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I referred to the footpath along which we come to the estate. All the 20 lands in dispute are to the south of that footpath and to the left of it as you go towards the estate from the Ussapitiya road junction. (Paragraph 20 of the plaint referred to). I meant that when the land was owned by those five people, clearing and planting of this land started. The land was planted for them by their Agents. The clearing was in 1926 and 1927. The land was being surveyed in 1925 and 1929 and immediately after that the clearing and planting started. I amended the plaint on 10.7.50. (Paragraph 21 of the amended plaint referred to). I think that the mentioning of the year 1929 as the date of planting is a mistake. There was an amendment by way of a motion on 5.6.51, by 30 which the year of planting was altered to 1927. What was meant was that the work of planting started in 1926 and the actual planting was in 1927. I discovered that fact from a letter sent to me by Messrs. Lewis Brown & Co.—dated 1.2.29 (P73),—who were planting.

When the commission was issued to the surveyor, Mr. Frugtniet, I went before the Commissioner when the surveys were made for this case. Defendant was represented by Mr. Fernando. Defendant claimed all the plantations and buildings in all the blocks. I claimed all the lands along with the plantations. I do not know what the Commissioner has stated in his report, but I claimed the plantations and the land. With regard to the two buildings, even now I do not claim them. Regarding plan 1078, I told the surveyor that I claimed the tea on that land. In plan 1079, I did not claim that plantation in lot A—on page 2 of the report—but I claimed the land. After the surveyor sent his report I saw it. (Notice issued to the Commissioner by Court, dated 31.1.50 DI). In DI the Commissioner has been ordered to mark the claims of parties to the plantations. It struck me that my claim to the plantations was not stated

by the surveyor. It never occurred to me to bring that matter to the notice of the Court or to my Proctor. It was after the survey that I amended the plaint. Neither in the original plaint nor in the amended plaint did I claim compensation for planting in the event of my not getting the land. In the amended third plaint I claim compensation after the first date of trial.

No. 17 Plaintiff's Evidence C. W. Peiris' Cross-Examination —Continued.

Q.—I put it to you that you never claimed the plantations because you never made them ?

A = I deny it.

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Q.—I say that you referred to the period of time when the plantations were made, but you did not state that the plantations were made by those who were co-owners, including yourself, because they were not made by them?

A.—It is not so. I deny it. That statement was put in that form in the plaint because few years later other co-owners came.

These plantations were not effected during the later co-owners' ownership, but it was during the ownership of the earlier 5 co-owners. There was no contest between the later co-owners and myself.

Shortly after I bought the Boyagoda title, there was a litigation. 20 Boyagoda brought two cases—one for a declaration that all of us were holding the property in trust for him and the other for an accounting in respect of all the lands I claim on the Boyagoda title. Only the first case referred to the lands I claim on the Boyagoda title. The second case is in respect of some other lands at Rambukkana. The trust case was instituted somewhere in 1926. The Privy Council judgment was in 1931. That case was fully fought by both sides. The District Court judgment was somewhere about 1928 and S. C. judgment was in 1929. If Boyagoda won that case the land would no longer have been the property of the Syndicate. We opened up the land in tea while that case was pending.

30 Q. I put it to you that the co-owners first wanted to see what the result of that litigation was?

A.—No. All the co-owners were quite confident of our title.

I remember the case in which I sued Sellamuthu. I lost that case. I have not produced the title plan for the block just by the road. That was given in exchange to Mr. Ferdinando. For lot 103, I do not have a Crown grant, but there is in fact a Crown grant.

For certain lands which are now in dispute, and in regard to them, ist defendant has pleaded Crown grant title. I did not know before about the existence of the Crown grant—before it was pleaded in the answer.

40 The Crown grant is for 28 acres, 3 roods, 35 perches. (Mr. Advocate Perera states that they are not Crown grants, but Crown settlements as he will argue). No. 17 Plaintiff's Evidence C. W. Peiris' Cross-Examination —Continued. I think I have obtained Crown grants from the Crown in respect of other lands. I do not know the details of the procedure before a Crown grant is issued. I did not get information that the Crown was taking steps to issue a Crown grant in respect of 29 acres out of the land in schedule A to the defendant. (Shown gazette No. 7757 of 24.1.30, Part 3, at page 99 (D2)).

I had my men on the land. In 1930 there was a Kanakapulle on the land. He did not inform me that the lands were being surveyed. My men did not inform me that *gazette* notices were affixed on the land. I do not know whether any inquiry was held as regards the claimants 10 to this land. I do not know that the Ratemahatmaya went for an inquiry. I got no information that 30 acres out of the 43 acres that I claim, were being made the subject of a grant or a settlement in favour of somebody else. I found it out only after this case. Even before we acquired the remaining shares of the other co-owners, there were two people particularly who knew that they were going to lose their jobs. By the time I discovered the Crown grants, I had already dismissed some of my people. My Proctor has summoned defendants to produce certain plans-plan 1340 dated 22.7.27, 1342 of 22.7.27, 1443 and 1444 both of I first came to know about those surveys when I made 20 17.7.28 representations to the Tea Control Department somewhere in March, 1948. Until then I did not know that the greater portion of the block I claim had been surveyed by others for the 1st defendant. I never got any information of the surveys. Mr. Craib was overlooking the estate from Ratnapura at that time. Mr. Rodale was superintendent from 1935, and before him Mr. A. P. Craib. I had a Land Clerk, conductors and watchers. At that time the superintendent was Mr. J. G. Craib. He was overlooking the estate from Karandupona estate. I had a K.P. residing at Ambulugala, about 1¹/₂ miles away from this particular block. In 1930 the tea was not pluckable. A three-year old tea plantation does not 30 require any attention, except occasional weeding. In 1929 we had not lost possession. In 1946 we lost possession. We entered into possession in 1946, September. Soon after that we appointed the Superintendent of Leukke Estate to look after this estate. He informed us that some of the blocks were being opened up. As soon as that information was got, I got plaintiff to write to the defendants. The total area in tea in 1946 was 107 acres. Mr. Ferdinando got 35 acres and I got 72 acres.

(Shown P88). Plaintiff had certain correspondence with the 2nd defendant Mr. Perera referred to in P88 was my Superintendent at the time. D3 is the letter dated 4.7.47 sent by N. W. Perera, Superintendent of Kempitikanda Group, to the 2nd defendant, referred to in P88. It is signed by N. W. Perera. N. W. Perera was Superintendent in 1947 and prior to that, up to the close of 1948. He was acting as my agent with regard to matters of the estate. (Mr. Weerasooriya moves to mark this letter D3 and the letter to which D3 is an annexure, D4, which is the original of P88. Mr. Perera objects to these documents unless N. W. Perera is

called. Mr. Weerasooriya cites Sections 18 and 19 of the Evidence Ordinance. Mr. Perera withdraws his objection to D₃. I admit it.

Mr. Weerasooriya says that in D₃ there is a statement—which is read out to witness—and he moves to mark as D₃ the copy referred to in D4. Objected to on the ground that the copy is written by a third party to the 2nd defendant and therefore not admissible unless the writer is called.

Mr. Weerasooriya contends that the letter is admissible as it has been written by an agent of the plaintiff and that D₃ is referred to in D₄.

I admit it subject to the objection).

(P88 read out). What the plaintiff refers to in P88 is the encroachment by defendants on her property of some of the lands in schedule B to the plaint, because the letter P88 refers to opening up of unplanted lands. (D4 read out). The plan referred to in D4 is plan P17. The three henas referred to in D4 are in schedule B of the plaint.

> Intd. N. S., D. J., 24.8.51.

Further hearing on 31.8.51 and 1.9.51.

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Intd. N. S., D. J.

1.9.51.

Vide proceedings of 24.8.51.

Appearances as before.

C. W. PEIRIS, recalled, sworn:

FURTHER XXD :-- On the last date I was referring to the correspondence plaintiff had with the defendants. I have produced the relevant letters. Plaintiff wrote to the defendants P98 on 3.1.48 and also P99 of 18.2.48 and P100 of the same date. No reply was received to any 30 letters after 18.2.48—to the letters sent by plaintiff to the 2nd defendant as well as to the 1st defendant.

O. Do you deny that plaintiff received a reply dated 21.2.48?

A.—Yes. She did not receive such a letter.

(Mr. Weerasooriya marks that letter D5). (D5 read out). I or the plaintiff did not receive this letter D5. I referred to the correspondence which my wife (the plaintiff) had with the Tea Controller. (P88 to P100 referred to).

No. 17 Plaintifl's Evidence C. W. Peiris' Cross-Examination -Continued.

No. 17 Plaintiff's Evidence C. W. Peiris' Cross-Examination --Continued. In regard to the correspondence between the Tea Controller and the plaintiff, I have produced certain letters marked PIOI to PIO7. These are documents relating to the assessment of Kempitikanda Group registered No. T.Z. 107. Ultimately, at a certain time, the Syndicate had obtained coupons for an extent of 43 acres in dispute in this case. Defendants had also obtained coupons. At the time an inquiry was held by the Tea Control Inspector to decide whether the plaintiff or the defendants were entitled to the issue of coupons, the system of issuing coupons had ceased. After the inquiry, the registration of this extent of 43 acres under T.Z.107 (Registered number), was suspended. I sent PI7 to the Tea Controller. I remember having seen the document in the hands of the Tea Control Inspector, and therefore I may have sent it.

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Mr. Craib sent a petition to the Executive Committee of Agriculture and Lands asking for an increase of assessment. In the petition, the extents were given, and the grievance was stated later. The standard production per acre had been under-assessed. In regard to P75, Ambulugala Division is referred to as 150 acres and this includes the 43 acres. There was no specific reference to the block of 43 acres in dispute in P75. Originally on P2 of 8.4.25 myself, Ferdinando and De Mel obtained a deed from the Chettiars. Ferdinando and De Mel are both my brothers-in-law. On the following day the three of us executed a deed in favour of Craib and Callander—deed No. 34 (D6). For that deed the schedules which were used for P2 were used, but certain allotments were crossed out. The lands in Polwatta Village had been omitted in deed 34.

Q. The deed by the Chettiars to the three of you refers to certain schedules ?

A.—Yes.

The following day the three of us by a deed attested by the same notary, executed a deed in favour of Craib and Callander. I cannot 30 remember whether the same schedules in P2 were used for D6. Some lands of deed 32 (P2) were omitted in deed 34 (D6). It was an omission on the part of the notary. When Craib and Callander transferred to plaintiff they refused to warrant and defend title. (Shown D6). Certain lands are crossed out in schedule B. All the 18 lands in schedule A of the plaint are crossed out in the schedule B of D6, but they were caught up in P5.

I remember the case which Boyagoda brought for Kempitikanda. I gave evidence in that case. Mr. Boyagoda pleaded a trust and I was questioned as to what the arrangements were between Boyagoda and the Syndicate. I also gave evidence in the case brought with regard to Belmont Estate, but I do not know these details well. There was an arrangement between Boyagoda and the Syndicate that some lands should be transferred back to him. Those lands did not include the lands in question. All those lands were described in deeds 754 and 755 attested by Mr. J. M. Perera. Those deeds have not been produced in 8**1**

this case. There was an arrangement that certain lands, including jungle and chena lands, should be re-transferred. I deny that they included these lands in dispute.

In 1929/30 I was financially embarassed to some extent. I was sued in a number of cases and decrees were entered against me. I claimed to make the payments by instalments and obtained instalment decrees in comparatively small sums of money. That was the height of depression. I remember the action which the plaintiff brought against Sellamuthu. It was on the basis that certain property was bought in 10 Sellamuthu's name by a third party. Sellamuthu Pillai paid the money for that purchase on an arrangement. My wife brought the action against Sellamuthu Pillai. At the trial it was alleged that a 1/4th share of the property was held by Sellamuthu in trust for my wife. I acted in that case on behalf of my wife. Sellamuthu denied the trust arrangement. My evidence was not accepted. The defendants in that case denied that there was any trust. The case was decided against my wife in the District Court, as well as in the Supreme Court, and it went up to the Privy Council and the same judgment was affirmed. In all the three Courts it was stated that the evidence of Mr. D. E. Weerasooriya had to be accepted in preference to mine. He was a Proctor of 27 years' experience.

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The Kempitikanda and Belmont Estate cases were tried by Mr. O. L. de Kretser. The Syndicate won and Boyagoda lost. I was described as a penniless speculator by Mr. O. L. de Kretser. It was a garbled version.

Mr. Rodale was Superintendent from about 1935 to about 1946.

Plaintiff is claiming compensation in the event of her not getting the land. I am not producing any books to show what was expended in planting the land, but I have produced the statements of accounts. I have no books from 1925 to 1932. I have claimed at the rate of **30** Rs. 1,000/- per acre. 300 lbs. per acre is the District average for Kegalla. I am claiming damages on that basis— $390 \times 2 \times 43, \times 35$ cents. I have not produced any statements of accounts for this particular 43 acre block. When I wrote to the Tea Controller, I stated that we had lost possession of the 43 acre block in 1946.

I remember the litigation I had with Messrs. Austin De Mel, Ltd. The Sellamuthu case is reported in 1941 All India Reporter, page 55 (P.C.). I was cross-examined in De Mel's case about the earlier cases in which I had given evidence. I stated that my evidence had not been accepted in any case in which I had given evidence earlier.

REXXD :--- I mentioned to learned Counsel that the books were not given to me even after I became proprietor. I produce letter dated 22.6.47 (P125) from Bois Bros. (Objected to. Admitted subject to proof). After I was cross-examined on the last date, I got a letter from Bois Bros. dated 22.8.51, which I produce marked P126. (Admitted subject to proof).

C. W. Peiris' Re-Examination

No. 17 Plaintiff's Evidence C. W. Peiris Cross-Examination -Continued.

No. 17 Plaintiff's Evidence C. W. Peiris' Re-Examination --Continued.

At the beginning of the last day's evidence my Counsel mentioned to Court that all the books I was able to get were in Court. These books refer to the Estate. I continued the works of this estate as they were done in the past. The extent of Ambulugala not given out on contract is one block of 14 acres and also another block of about 8 to 10 acres, which is an isolated block—A18. The extent given out on contract is 118 acres of Ambulugala and 125 acres of Yatimahana tea.

In my examination-in-Chief I said I had all the monthly reports, but I produced the reports for 1942 and 1943. I now produce reports from January to November of 1944 (P127 to P137). (Admitted subject to proof). I also produce the monthly reports for 1942 (P138 to P145), from January to August.

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(Admitted subject to proof). I have got in Court the books from 1933 to 1943. I have got the ledger, journal and day-book for each year. I move to produce the ledger for the year 1933 to 1936. (Objected to. Objection upheld).

I was asked whether I had claimed compensation. Though I did not claim compensation, I had claimed damages in the original plaint. I have set out my claim for compensation in the original plaint, though I did not claim compensation. (Paragraph 21 of the plaint referred to). From 1925 to 1929 or 1930 these lands were owned only by 5 co-owners.

I was able to identify land A17 because it is in Uduwewela Village. In my schedule to the plaint there are at least two lands in Uduwewela. All the others are in Polwatta Village.

Plaintiff being a co-owner, the other co-owners said there need not be any warranting and defending among co-owners and that whatever they owned and possessed would be transferred to her.

Mr. N. W. Perera was not residing on the estate. He was residing on Leukke Estate, which is the adjoining estate, and looking after this property. The Kanakapulle I referred to was residing about $1\frac{1}{2}$ miles from the estate. Ramiah was the resident Kanakapulle. He was the man who did the contract weeding of this block. He weeded 128 acres. 125 acres of Yatimahana were given out on weeding contract.

I showed the plan P17 to the Tea Controller. I draw the attention of Court to P103 in which I say that I handed plan 1304 to the Tea Control Inspector. In P105 also I refer to the fact that P17 was handed to the Tea Control Department. It is also referred to in P106.

The prospectus (P75) does not speak of specific blocks. There is a statement in P75—Tea partially bearing, planted in 1927—150 acres. This extent includes the 43 acres in dispute.

I am now in possession of 72 acres of that extent, Ferdinando is in possession of 35 acres and the defendant is in possession of 43 acres.

The original deeds 754 and 755 are with me, but not in Court. Certain lands which were to be given to Boyagoda were described in deeds 754 and 755.

No. 17 Plaintiff's Evidence C. W. Peiris' Re-Examination -Continued.

The height of the depression was in 1929/30.

With regard to the identification of these lands, I said I identified these lands in separate blocks in schedules A and B by reference in P17, Mr. Frugtniet's plan and certain land-marks which Mr. Frugtniet pointed out. I also went to the land. It was all planted area when I went there.

	Intd. N. S.,
10	D. J.,
	1.9.51.

Further hearing on 23.11.51, 13th and 14th December, 1951 and if necessary 31.1.52 and 1.2.52.

> Intd. N. S., D.J.

1st September, 1951.

I.S.

23.11.51.

Appearances as before.

- 20 W. A. PASSE, sworn, 46, Clerk, Lewis Brown & Co., Ltd., Colombo: W. A. Passe Examination I have been working at Messrs. Lewis Brown & Co., Ltd. for the last 25 years. I am familiar with all the signatures of the Directors and the Secretaries. (Shown P72). It is a letter despatched by my Firm and signed by Mr. A. E. Paterson. I worked in his time. I know his signature. (Shown P73). It bears the signature of Mr. Robert Bell. He was the Secretary at that time. Mr. Paterson, who signed P72, was a Director of the Company. Both letters are stamped by Lewis Brown & Co., Ltd. They were at that time the Agents of Kempitikanda Estate.
- XXD :---What the Firm of Lewis Brown & Co., Ltd. did in connection W. A. Passe Cross-Examina-30 with these estates, I do not know.

tion

REXD :---Nil

Sgd..... D. J.

No. 17 Plaintiff's Evidence Examination

B. J. THIEDEMAN, sworn, 62, Surveyor & Valuer, Colombo: (Shown P17). It is a certified copy of plan No. 1304—certified by ^{B.J. Thiedeman} myself. I have the original with me in Court and I am looking at it when giving evidence.

> I have been a Licensed Surveyor since 1917. I was a Special Licensed Surveyor but that licence does not exist now. Now I am working for the United Kingdom as Chief Surveyor and Valuer in Cevlon under the Defence Regulations, and I am Command Land Agent. I have been employed in that capacity for 7 years. Before that I was a practising surveyor. I had a Survey Agency. I closed it down because I could not get employees.

I have no field-notes with me. I made the original of P17 in 1925/1926. It took me about $2\frac{1}{2}$ to 3 months on the field to make that survey. A total area of 528 acres had to be surveyed. I was resident in that area for this purpose. I had a staff of labourers at that time. The expenses for the labourers were paid by Mr. J. G. Craib of Karandupona Estate. He was a brother of Mr. A. P. Craib of Ratnapura District, whom I knew very well. The survey was done for Messrs. Austin de Mel, C. W. Peiris and Ferdinando, another surveyor. Mr. Craib came on to the scene to introduce me to Mr. Boyagoda. There was no dispute during 20 the time of my survey. The lands were shown to me sometimes by Mr. Boyagoda, sometimes by the Headman of the Village, and sometimes by people sent by Mr. Boyagoda. I have shown the various allotments. Lots 89 to 95 are on the top and further to the south are lots 97 to 116. I have given a reference on the left-hand corner of the plan and I have given the names of the lands, the extent and the condition of the lot with the owners' names. The representatives of Mr. Boyagoda gave me the names and the ownership. That was the information I got on the spot. I have not given the name of Peiris or De Mel or Ferdinando. The names given there are the names of the persons said to be the owners at that 30 time, of the lands I surveyed. In addition to the lands which have been purchased by Messrs. Peiris, Ferdinando and De Mel, I have also surveyed adjoining lands which have not been purchased by them. That was because there was a proposition of purchasing these lands, as far as I remember. I surveyed those lands on their instructions. I have surveyed all the lands that they had purchased, according to them. Boyagoda had interest in the land and he knew the country well. He was a Ratemahatmaya, but I cannot say of what District.

B. J. Thiedeman Cross-Examination

XXD :--- I first came to know that I had to give evidence in this case about three months ago. I am here on summons. I have not brought it. I had a conference with the Proctor for the plaintiff about last week—not before that. I cannot say when I gave the certified copy P17 of the plan No. 1304. It is dated 12.7.51. I issued a certified copy on 12.7.51. It was made for me by a draughtsman and I certified it. I was requested to give a certified copy 10 or 12 days before that. I first came to give evidence in this case today. I did not come on the previous dates.

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I believe I did get summons on a previous occasion, but I did not come. The first time I informed the Proctor for plaintiff of what I knew of the property I surveyed was on Tuesday evening, 20th of this month. I am B.J. Thiedeman not aware whether my name had been included in the list of witnesses for the plaintiff on 24.1.51. The proctor did not know what I was going to say when he filed the list. I do not know whether summons was taken out on me on 5.7.51. Mr. Peiris wanted me to make a copy of the plan and he came and saw me. I believe Mr. Peiris handed me a summons and requested me to give a copy of plan 1304. I asked him for what 10 purpose he wanted the plan. He said he had some litigation about the property in plan 1304. I think I did ask him in what Court that case was and he said it was at Kegalla. I knew at that time that I had to give evidence. He asked me only about the condition of the property when I surveyed it. P17 had a number of lots marked on it. He asked me how I identified the lots on the diagram and I told him that it was by reference to the schedule. He did not ask me how I came to get the information on the schedule. It was Peiris's representative with Mr. Craib who gave me that information; So he did not need to ask me that. Mr. Peiris was not present when I made the survey. His representative 20 was present. Before I started my survey I met Mr. Craib, Mr. Peiris and certain others. Mr. Peiris said that Mr. Boyagoda will give me the information. He did not mention any other name. I am quite sure of this. I have not entered this in any diary or field notes. I am speaking from memory. I have not met the others who gave information, after that time. I do not remember the name of the Headman, whom I mentioned earlier.

I am speaking the truth. (Evidence of Mr. Peiris at page 37 read out to witness). Mr. Peiris knew that it was Mr. Boyagoda principally who was told off to give me the information. I am not aware that this **30** is the first time that the Court has been informed that it was Mr. Boyagoda who gave the information for the depicting of these lots. I never met the Proctor for Mr. Peiris till today. Peiris never asked me and I never said that it was Boyagoda who pointed out the lots.

Q.—Is it not the fact that Mr. Boyagoda was never there and that your evidence is false ?

A.—It is not correct to say so.

Q.—And that you are inventing this story because you possibly could not locate the lots?

A.—No. It is not correct.

40 I am not aware whether Boyagoda's rights were sold in 1924. I do not know anything about any litigation between Boyagoda and the Syndicate of De Mel, Ferdinando and Peiris.

No. 17 Plaintiff's Evidence Cross-Examination -Continued.

No. 17 Plaintiff's Evidence B.J. Thiedeman Cross-Examination -Continued.

I first went to the land in November, 1925. Mr. Craib of Karandupona came because, I believe, he had an interest on behalf of his brother, Mr. A. P. Craib. Mr. A. P. Craib, I think, was a co-owner of the land. That was in November or December, 1925.

When I make a plan I number it. We have a serial number for our own information. We date our plans. There is no rule on the Licensed Surveyors that plans should be numbered and dated, but it is the usual practice to do so. I am not aware of such a rule by the Surveyor-General, but it is the practice. I always date my plans when I issue them. 1304 must have been a serial number. In Plan 1304 there is no date. It is on account of a printer's error.

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I was on this land for about three months, not every day, but with breaks. I was not there for 8 or 9 months. The original of P17 is not dated.

I lost all my field notes when I closed down by Agency in 1942when I went away Upcountry. To test the accuracy of a plan the fieldnotes are very important. They are the original notes made by the surveyor. Those notes would not point out the names of the persons who pointed out the boundaries. My notes would not show who pointed out the boundaries. When different people made the statements with regard to allotments I to II6, I jotted down in the field-book the name of the said-to-be owner and the nature of the land. No notes are now available of what I then made, and I never made a note of the person who gave me the information.

The tablet in plan P17 has 116 allotments. As I proceeded with the survey I put down all the 116 allotments that were said to have been bought. I put them down in 1925 to 1926. No earlier plans were given to me, nor any deeds. The description of the lots are in the tablet. (Lots I to 9 in P17 referred to). They are all chena, about 28 acres in The boundaries had been cut through the chenas before I got extent. on to the land. I think it was Mr. Craib and Boyagoda who pointed out these boundaries. Mr. Craib had those boundaries prepared for me. I did not see anybody cutting those boundaries. The boundaries had been cut where necessary. In some cases there was no cutting necessary. Where there was heavy jungle the boundaries had been cut, but where the jungle was not heavy it was not necessary to cut lanes for me to find out the boundary, but there were stakes and rods planted. The allotments had been defined for me for my survey of these 116 lots. Invariably this is done in Nindagamas. The estates open their boundaries of panguwas and we go and survey. I have surveyed in the Ratnapura District in 40 1920. The panguwas had been cut out when I went. In that survey there was a good number of panguwas—about 50, 60 or 70. The Nindagamas I went to survey had different panguwas, and within the punguwas family allotments had been separated out. That is known as a Cadastral survey. We go to redefine lots. Whenever I go for a survey, the boundaries will be pointed out by those who want the survey. I have not had occasion

to ascertain the boundaries where parties were not agreed. I have examined deeds for the purpose of ascertaining boundaries. One cannot go on physical features, as a rule. Except for the cut lines, there were no physical features on this land. The cuts looked new-about a couple of months before I went. I made no verification of the lots. I had no plans or deeds. I followed the cut boundaries. Where the boundaries were not cut there were stakes and rods. I took three months because I did not live there. I attend to other work too. It was a tedious job. Lot I is Lambutuwehena. I do not know how that lot came to bear 10 that name. An extent of 3 acres one rood had been marked out and I surveyed it. How it came about that that particular area was marked out as the extent of that particular chena, I do not know. The name of the vendor is given as Kalu Banda. Boyagoda and party gave me that name.

I cannot say which of these lots were pointed out by which set of parties.

I knew Boyagoda previously for 3 or 4 years. He must have been about 48 or 50 years old at that time. He was an aggressive type of man-a sort of Overlord. I had conversations with him. I knew that 20 he was conveying this property to Callander, Craib and some Syndicate. I did not know that the property had been sold against him. I did not know that he had no interest in the property at that time.

(Shown original of P17). There is a figure of a survey inserted on the body of the plan, partly covering Nos. 64-73 on the tablet. It is a superimposition on the old tablet.

Summons was handed to me by Mr. Peiris on the first occasion. I have no clear recollection that I got the summons, but I think I did. Peiris came and told me that he was going to England and that the case was going on. That was after the first day's hearing, I think. The 30 first date of hearing was 19.7.51. I did not come on that occasion. After that date I met Peiris and he introduced a nephew of his. After the first day's hearing I did not have a conversation with Peiris as to how these chenas were identified by me. He must have known that Boyagoda pointed out the boundaries.

REXXD :- This is the first date on which I have attended Court B.J. Thiedeman in connection with this case. The first time I met plaintiff's Lawyer in tion connection with this case was on 20.11.51.

I have stated the owners to be Peiris, Ferdinando, De Mel, Craib and Callander. I think it was Austin de Mel, Ferdinando and Peiris who 40 engaged me for this survey. They had an Office in Fort and they made arrangements for me to take up the survey. They told me that they would have all the boundaries opened, and I was only to survey the lots. If the boundaries were not marked on the ground, my charges would have been very much higher, almost 150% more.

Re-Examina-

No. 17 Plaintiff's Evidence B.J. Thiedeman Re-Examination ---Continued. De Mel, Ferdinando and Peiris were brothers-in-law and they were running a business at that time.

(Evidence of Mr. Peiris at page 37 read out).

I did not know of any of the lots before I went to the land. All these names were given by me from the information I got on the spot. No one raised any disputes or objections when I went to the land. No one put forward any claims when I was there.

Even the summons for this occasion was sent to me by Registered Post. I have given no written statement of any kind either to Peiris or to his lawyer. I have not given any oral statement to anybody till 10 I met the plaintiff's lawyer on the 20th instant.

> Intd. N. S., D. J. 23.11.51.

A. J. Frugtniet Examination

A. J. FRUGTNIET, sworn, Licensed Surveyor, Kegalla: On a commission from this Court I made three plans. Plan marked X contains the lands in schedule A of the plaint, except lands 3, 16 and 18. Plan Y is a plan of land 18 in schedule A. Plan Z shows the lands in schedule B except I and 8 which have not been surveyed. With my survey I sent in my report which is dated 18.4.50. I produce it marked P146. I also produce Title plan No. 405308 marked P147. It is one of the Title Plans 20 relied on by the defendants. I have identified the lots in schedule A of the plaint on the ground, in regard to Mr. Thiedeman's plan P17 and Plan P147. Land AI I identified as lot 106 in P17, land A2 as lot 109, A3 is not surveyed, A4 also as lot 109, A5 as part of lot 111, A6 as 108, A7 as 107, A8 as part of lot 104, A9 parts of lots 100, 101 and 102, A10 as 97, A11 as 111, A12 as 110, A13 as 110 and 112, A14 as 114, A15 as 105, A16 is not surveyed, A17 part of 104. I have also been able to identify the lands in schedule B. Land BI is not surveyed. B2 is lot 91, B3 is 93, B4 is 94, B5=96, B6=92, B7=90, B8 is not surveyed, B9=95, B10=89. I have also superimposed plan P17 on my plan X. I produce that super-30 imposition marked X1. I have also superimposed P17 on my plan Z. I produce that superimposition marked ZI. I am producing a certified copy of plan 1340 referred to in the defendant's deeds marked P148. It was a copy taken by Mr. Siriwardena, Licensed Surveyor, on 14.8.51 when the defendant's documents were made available to the plaintiff's Proctor for inspection. On the original plan 1340 of which P148 is a copy, there are 27 allotments shown, but the extents of those allotments are not given. In P148 I have computed and entered only the extents. The rest of the plan in a true copy of their plan 1340. The extents come to 78 acres 0 roods 27 perches. On that same occasion Mr. Siriwardene also made a copy of 40 plan 1443 of 17.7.28 which the defendant's Proctor had made available to the plaintiff's proctor, marked P149. P149 is the same as my plan Y for land 18 in schedule A. A149 shows three allotments of land with a broken line in the middle. That line indicates a division. On either side of the division there is an extent of 8 acres 3 roods 15 perches. The broken line divides

the land into two equal parts. Sketch PI17 is approximate to my plan X and also to plan P148. P149 is the plan to which I refer in my report. It was produced by the defendant's agents and withdrawn. I have A. J. Frugtniet also referred to title plan P147 in my report. I have also made a schedule giving the number of the land in the schedule to the plaint, the name of the land, the identifiable lot in plan P17 and the boundaries by which I identified each lot, marked P150.

I was taken on a commission of this Court by the plaintiff. All the lands surveyed were pointed out to me by the plaintiff's deputy, Mr. C. W. Peiris, as belonging to the plaintiff. 10

XXD :- Commission was issued to me dated 31.1.50 to survey the A. J. Frustniet land according to the boundaries given and any other boundaries that would be pointed out.

(Commission read out). I went to the land. The representatives of both parties were there, certain plans were produced before me, and on the material then available I sent in my report P146. In that report, in regard to plan Y, I fixed land A18 in schedule A. Defendant produced Plan 1342 dated 22.7.27 (D7) which is identical with my plan 1077. My plan X refers to the remainder of allotments in schedule A to the 20 plaint, and I proceed to state which of the allotments in plan 'P17 are included in my plan X—No. 1078. Then I submitted plan Y—No. 1079, and I state which of the lots in plan P17 is included in plan Y. (Plan No. 1078 referred to). I refer to certain lots in plan 1304 in my report and I say that the area in dispute includes the following lots in 1304. In my evidence today, I have not purported to identify as falling within plan X any other lots in plan 1304.

Q.—You have done today in evidence something more than you did in your report?

A.—Yes.

Different lots in schedule A are identical with different lots in Plan P17. In order to show that today I had no new material except the old data; similarly with regard to my attempt to identify different lots in schedule B with different lots in plan Z. In my report it was found not necessary to do so, but afterwards plaintiff wanted the details. No further commission was issued to me for this purpose. I did not go to the land for that purpose. I identified land AI as lot 106 by comparing it with P147, by reference to P17, by reference to the schedule to the commission issued in this case, by the notes I made at the survey, and also we check one or two boundaries which are given on the ground.

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Intd. N. S., D. J., 23.11.51.

Further hearing on 13th and 14th December, 1951.

Cross-Examination

No. 17 Plaintiff's

Evidence

Examination

-Continued.

No. 17 Plaintiff's Evidence A. J. Frugtniet Cross-Examination —Continued.

A. J. FRUGTNIET, recalled, sworn,

FURTHER XXD:—Q.—In your report P146 you stated that plan Y is identical with plan No. 1342 dated 22nd July, 1927, produced by the defendants deputy—D7 ?

A.—Yes.

As stated in my report there was nothing on the ground to show the different allotments of land. Plaintiff's deputy produced a copy of a survey plan. I do not have that copy with me now. (Shown P17). It is 10 certified on 12th July, 1951. It also bears the date 10.2.51 as the date of drawing. P17 was not produced before me. I took a tracing of the lot surveyed in plan 1304 and referred to at the end of schedule A to the commission D1. The schedule attached to the commission D1 states that the allotments of lands Nos. I to 14 are identified more or less as lots, and it gave a number of lots. I took a tracing of Mr. Thiedeman's plan and applied it on my survey, and I stated in my report that the area in dispute included certain lots. I superimposed a tracing of a survey and said that certain lots in the survey took in certain lots of my survey.

I did not purport to identify a particular lot in the schedule with a 20 particular lot in the tracing, nor with any particular portion of the land I surveyed. Similarly, I dealt with schedule B. I applied a tracing from the plan 1304 on to my survey of the land as pointed out in schedule B and I said that the tracing included a number of lots. It was a general application of a plan. In regard to plans P17 and P147, land A1 I identified as lot 106. I stated that a particular lot in the schedule corresponded with a particular lot in Mr. Thiedeman's plan. I visited the land with Mr. Peries and he had some men to give me information, and that was the best identification on the ground. That is how I came to compile P150, with one or two boundaries. I cannot say whether they 30 were correct or not. Some of these things were evident. I did not verify those facts on the ground. In certain instances those were evident on the old plan. When we questioned the parties they repeated the names that were in the old plan. There was nothing on the ground to support those statements, except the names of the lands. What was stated corresponded with what was in the plan. I went on the information given to me. There was nothing separating one lot from the other.

For the survey I took more than one day. I went to the land on several occasions and after that I made my compilation in the office. After that I went once or twice after I made the return to the commission 40 I did not go on a commission then. I went on Mr. Peries's request. Defendants were not present on that occasion, nor were they given any notice. It is the duty of the Commissioner to notice both parties before he goes to a land in connection with a commission. In connection with the second compilation defendants were not able to give me the information. So I did not notice them.

Q.—You said when you gave evidence on the last date that "different lots in schedule A are identical with different lots in Plan P17. In order to show that today I had no new material except the old data; similarly A. J. Frugtniet with regard to my attempt to identify different lots in schedule B with different lots in plan Z. In my report it was found not necessary to do so, but afterwards plaintiff wanted the details. No further commission was issued to me for this purpose. I did not go to the land for that purpose. I identified land AI as lot 106 by comparing it with P147, by reference to P17, by reference to the schedule to the commission issued in this case, 10 by the notes I made at the survey, and also we check one or two boundaries which are given on the ground?"

A.—Yes.

I do not know the names of the persons who made those statements to me. I do not know how they came there. I do not know what material Peries had to make those statements to me. (P150 referred to). (Lot AI). The name of the land is Udakeyedeniyahena alias Wawulbulehena. I have given two boundaries. Two boundaries would be insufficient data to locate a land. Where I have given only one or two boundaries, that is not sufficient for a location of the land. In regard 20 to the name of lot AI, the persons present said that it had two names. Somebody said that an extent of 3 acres and 13 perches bears the name which I have put down. In the schedule the name of AI is given as Udakeyedeniye hena. In P17 lot 106 is given as Wavulbulehena.

Q.—Is it not the fact that the name in the schedule and the name in the plan are different?

A.—Yes.

In regard to Village limits, the Village limit is marked on the ground. There were land-marks. The southern Village limit of AI is Uduwewela. AI is in Polwatta. In the schedule to the plaint AI is given as in 30 Polwatta. In P150 I have given an *alias* to the lands in many cases. The schedule which I got contained no alias. The particular lot AI described in the plan P17 also had no alias. I did not connect both names. I did not survey the extent. I stated that AI is 3 acres and 13 perches from the extent given in P17. (Shown XI). (Superimposition of lot 106 referred to).

> Q.—There are portions of lot 106 which fall outside your survey? A.—Yes.

I have marked that in yellow. All portions which I have marked yellow in (XI) are outside my survey. There are portions I surveyed 40 which are outside P17. In X1 I have made a note of portions of land that have been surveyed but which fall outside the land in P17. I have given in P150 certain boundaries in respect of certain lands in the schedule. For AI I have given the western boundary as Bakmeeangehena and Purana. I got Bakmeeangehena as the western boundary because lot 102

No. 17 Plaintiff's Evidence Examination -Continued.

No. 17 Plaintiff's Evidence A. J. Frugtniet Cross-Examination —Continued. is not Bakmeeangehena, but Purana. I did not get Bakmeeangehena by finding out what lot 102 is. Lot 106 in P17 has on its west lots 100, 102 and 103, and a portion of land to which no lot number has been assigned. In the tablet in P17 neither lot 100, 102 or 103 is Bakmeeangehena.

Q.—Your statement in P150, that to the west of lot 106 is Bakmeeangehena, is not correct?

A.—It is not correct.

Q.—You point to lot 102 in P17 where it is described as Pita Puranehena?

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A.—Yes.

Where I gave the word "Bakmeeangehena", it is not correct. A9 gives the name of the land Bakmeeangehena and Purana and its boundaries. I took the land A9 as the western boundary of land A1. I took it, that the land Bakmeeangehena and Purana given as the western boundary in A1 is the land defined in A9.

When I went for the survey, defendant's deputy produced a title plan. I applied that plan and found it to be identical with regard to schedule A, except land A18. There were certain buildings in their occupation and plantations which they claimed. (Paragraph 4 of P146 referred to). I say there with regard to schedule A, that the plantations and the houses were claimed by defendants.

Similarly with regard to schedule B, I stated that there were certain plantations and that all were claimed by the defendants, and that there were some houses which were in occupation and claimed by the defendants. At my survey plaintiff claimed the entirety of the land. Plaintiff did not claim the houses. Plaintiff did not say that they did not claim the plantations. As far as I remember, plaintiff did not say that he claimed the plantations. I have stated that the plantations and houses were claimed by the defendants in regard to schedules A and B. Both parties claimed the land. In the commission I was specifically asked to make a survey according to the boundaries pointed out and to note the plantations and buildings standing **thereon** and claims thereto. When I stated that the plaintiff claimed the land, I meant that he counter-claimed the plantations. Defendants claimed the plantations in the presence of plaintiff's deputy.

A. J. Frugtniet Re-Examination RE XXD :---(Shown P151). This is the document which I referred to as the copy of the Estate plan shown to me when I went for the survey. It was produced before me at the survey.

In P17 lot 101 is shown as Bakmeeangehena. In P150 I have shown the boundaries by which I identified Bakmeeangehena. I identified **40** the boundaries as follows:—South by Crown chena, west by paddy-field and east by Purana. I identified Bakmeeangehena as lot 101 with these three boundaries. The Purana consists of lots 100 and 102. P17 gives the name Pita Purana to those two lots.

I found that AI was bounded on the west by Bakmeeangehena and Purana and south by Uduwewela Village limit. If I have two boundaries on the west and the south I can locate the land. I took all the extents from the plan P17. With regard to lot 101 the boundary on the ground was the Village boundary on the south. That was the method I used to identify all those lots. I always looked for two adjacent boundaries.

In compiling the reference to the boundaries in P150, Mr. Peries took me to the land. I visited the land after the survey with Mr. Peries about twice. That was after I made the return to the commission.

What I meant was that I did not go to the land for that purpose on a commission, but I went to the land after the survey. I found the Village boundaries on the land and there was a mala-ela, and I have shown a big rock "maha-gala."

In compiling P150 I have referred to the names given in P17. If I get two adjacent boundaries, I can always locate the land, but I cannot survey it without knowing the extent.

In addition to Mr. Peries, some men were there when I went to locate these lots.

FURTHER XXD. BY MR. WEERASOORIYA : (Shown P151). This is the same as P17. P17 is a certified copy of P151. P151 is a copy from 20 the original draft plan. The draft would be the original. Therefore PIGI would be a copy. I never saw the original.

REXXD :— The draft plan is kept with the surveyor.

Intd. N. S., D. J., 14.12.51.

C. B. KUMARASINGHE, affd., 49, Assistant Commissioner of Labour, c. B. Kumara-Colombo: (Shown P82 dated 6.11.36). It is a letter sent by the Controller of Labour to Bois Brothers. I have the original of P82 in 30 my file. I produce a certified copy marked P82a.

I produce a certified copy of a letter dated 12.12.38 from the Controller of Labour to the Superintendent of Kempitikanda Estate marked (P152). I produce a certified copy of a letter dated 18.1.39 from the Controller of Labour to Bois Bros. (P153), in which it is stated that the Assistant Controller of Labour who inspected Kempitikanda Estate has reported the correct acreage as 301 in tea and 238 in rubber. The Assistant Controller referred to is myself.

XXD :--- I went and examined the books on the estate. I did not c. B. Kumaraknow to what portion of the estate the books referred.

singhe Cross-Examination

REXXD :---Nil.

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Intd. N. S., D.J., 14.12.51.

singhe Examination

No. 17 Plaintiff's Evidence A. J. Frugtniet Re-Examination -Continued.

No. 17 Plaintiff's Evidence E. Weerakoon Examination E. WEERAKOON, affd., 40, Clerk, Tea Control Department, Colombo : (shown P 76, P 77, P 78, P 79, P 80 and P 81). They are all certified copies issued by the Tea Controller from documents which I have in the file. P154 is also a certified copy dated 11.7.38 (Mr. Perera undertakes to call Mr. Hermon who has sent the reports P79 and P154).

PIOI to PIO7 are also documents issued by the Tea Controller.

(Adjourned for lunch).

Intd. N. S., D. J., 14.12.51. 10

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Trial resumed

E. WEERAKOON, recalled, affd.

FURTHER XD :—PIOI and PIO2 refer to registered Number T.Z.III. That was the number under which the defendants' estate was registered. PIO3 refers to T.Z.IO7. That was the registered number of the plaintiff's estate. By PIO3 of 6.3.48 the plaintiff's husband complained that there was a double registration of an extent of about 80 acres; a very substantial part of which was planted in tea. Earlier Mr. Peries had complained to the office about it. Before that the Department did not know that there was a double registration. The Tea Control Inspector at Kegalla held an inquiry. One of the complaints made by Mr. Peries at that time was that the Tea Control Dept. had given a permit to the defendant to open up tea lands.

(Mr. Weerasooriya states that the attached statement by Mr. Peries to P105 is a statement of facts, the entirety of which are not admitted by the defendant).

E. Weerakoon Cross-Examination XXD:—Defendant's tea area was registered as T.Z.III. On 25.7.34 the Tea Controller wrote to Mr. M. S. Fernando, a letter in regard to T.Z.III. (it is marked D9). M. S. Fernando submitted on 7.6.38 a return in the usual form giving certain particulars of the extent registered as T.Z.III. (It is marked D10). On IIth July, 1951, the Tea Control Dept. has issued a certified extract from the register of estates giving the registered number, the name of the estate, the registered owner, the acreage and the crop and also coupons issued for the years 1938—1939, onwards up to 1950/1951. (It is marked D11).

REXXD :---Nil.

Intd. N. S., D. J., 14.12.51.

K. SHANMUGANATHAN, affd., 32, Tea Inspector, Kegalla: I was a Tea Control Inspector in 1948 and stationed at Kegalla. P105 of 7.5.48 was a letter addressed by plaintiff's husband to myself. It was he who first brought it to my notice that there was a double registration in respect of lands covered by T.Z.107 and T.Z.111. As a result of this complaint I held an inquiry at the Mawanella Resthouse. Both parties came there and produced their deeds, plans and documents. The defendants did not produce any plan. Plaintiff's husband stated that the encroachment can be verified by reference to plan 1304, which was handed to the Tea Control 10 Department on 3.3.48—that is P17. (P106 read out). I inquired into the matter and I cut off 43 acres from the Plaintiff's T.Z. 107. The entire extent which was doubled is 43 acres. Plaintiff was left with 151+71 acres 2 roods 04 perches: 151 acres of Yatimahana division and 71 acres 2 roods and 04 perches of Ambulugala division. Out of the plaintiff's registration of Ambulugala, I gave to C. E. Perera and Lakshmi Gunawardena 35 acres one rood 36 perches. I said I was not going to decide the question of title. Plaintiff had complained that the defendant was in possession. I decided to hold in favour of the party that was in possession. Mr. Peries also complained that the Tea Control Dept. had 20 given a permit to the defendant to open up certain tea lands. I informed the Department about that complaint. P106 of 13.8.48 was another letter addressed to me by plaintiff's husband.

XXD :—I was satisfied that the defendant was in possession of that K Shanmuga-43 acre-block and that the defendant had been correctly registered as the Cross-Examinaproprietor.

REXXD :-- I was satisfied that the defendant was in possession K. Shanmugabecause it was admitted by Mr. Peries on behalf of the plaintiff. In Pro5 and Pro6 I have stated that the complaint of Mr. Peries was that the defendant is in possession.

> Intd. N. S., D. J., 14.12.51.

Intd. N. S.,

D. J.

Further hearing on 31.1.52 and 1.2.52.

Appearances for plaintiff as before.

31.1.52.

MR. ADVOCATE C. R. GUNARATNE with MR. ADVOCATE R. F. PERERA instructed for defendants.

40 L. J. MONTGOMERIE, SWORN, Director, Bois Bros. & Co., Ltd., Colombo: I joined the Firm of Bois Bros. & Co., Ltd. in 1925 as an assistant and I have been working with the Firm ever since. I became a Director in 1946 and I am still a Director. Bois Brothers were the agents

L. J. Montgo-

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No. 17 Plaintiff's Evidence K. Shanmuganathan Examination

No. 17 Plaintiff's Evidence L. J. Montgomerie Examination —Continued. of Kempitikanda Group from 1931 to 1946. They were also agents of Lellopitiya Estate, the property of Lellopitiya Estates, Ltd., for a part of that time. A. P. Craib and A. D. Callander held large shares in Lellopitiya Estates Co., Ltd. They were also part-owners of Kempitikanda Group and it was they who arranged the agency with us. I knew Mr. A. P. Craib. During the time that our Firm (Bois Bros.) were the agents, the gentlemen in charge of the Kempitikanda Group were: in the early part Mr. A. P. Craib, and Mr. H. C. Rodale was latterly the superintendent. They were in charge of the Estate itself. A. P. Craib is dead. H. C. Rodale is in England. He left Ceylon some time after the last War. Before he was known as Rodale, he was Robotham. I knew A. P. Craib's brother J. G. Craib of Karandupona Estate. He was the superintendent of Karandupona for many years. He had nothing to do with the Kempitikanda Group in an executive capacity. I believe he had something to do with the purchasing of land in regard to Kempitikanda Estate.

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I have with me the files available in respect of Kempitikanda Group. I have the estimates sent to me by A. P. Craib for the years 1932 to 1933. They are signed by A. P. Craib. I produce the estimates for 1932 (P155) and for 1933 (P156). Both documents are signed by A. P. Craib as 20 superintendent, and I identify the signature. In P155 at page 3 there is an estimate of 80,000 lbs. made tea from Ambulugala, but there is no provision for made tea from Yatimahana. There is provision for plucking in respect of Ambulugala, but there is no such provision in respect of Yatimahana. The estimates P155 consist of a summary given on the first page which is unnumbered, and the estimates numbered 1, 2 and 3. Similarly in P156, the first page has no number, but the other pages are numbered I to 3. Again at page 2, an estimate is made for made tea from Ambulugala, which is described as 150 acres mature tea, and on the 30 same page Yatimahana is described as 151 acres immature tea.

P82 and P153 relate to certain correspondence with the Controller of Labour. The originals of those letters are in my file. P153 is dated 18.1.59. (P153 read out). I referred P153 to A. P. Craib. I produce the press-book containing the copy of my letter of 20.1.39 forwarding that letter to Mr. A. P. Čraib. Mr. A. P. Craib sent me a reply which I produce dated 3.2.49 and marked P157. (Shown P84). It is a letter written by Mr. Rodale. I identify his signature on P84. (Shown P85, P86, P87). These are monthly reports and the attached documents which have been sent to Bois Bros. by Mr. Rodale. I identify his signature on those documents. P127 to P145 and the documents attached 40 thereto were all monthly reports sent to Bois Bros. by Mr. H. C. Rodale who was the superintendent at the time. I identify his signature on these documents. (Shown P125). It is a letter written by Bois Bros. in June, 1947 to the plaintiff explaining that the books which he wanted were at Aitken Spence & Co., Ltd. P126 is a copy of a personal letter dated 22.8.51 written by myself to Mr. Gaddum, who was a Director of Aitken Spence & Co., Ltd., to give the books to the plaintiff. I produce the

ledgers from 1932 to 1936 (P158), from 1938 to 1941 (P159), 1942 to 1944 (P160). P160 has been kept up to the termination of our agency. I produce the corresponding journals for the years 1938 to 1944 (P161) and 1044 up to the end of our agency marked (P162). P162 also contains figures after our agency terminated.

There was a proposal to float a limited liability Company called Utuwankanda Estates, Ltd. I have in my file a prospectus which was prepared by my Firm. (P75 referred to). It is a copy of a skeleton prospectus issued in 1932 and kept in my file. (Objected to on the ground 10 that, unless the witness is personally aware of it).

I cannot say anything more than that my file contains P75. That file is kept in the normal course of business.

(ORDER-Admitted subject to objection).

There was a later proposal to form a limited liability Company on a larger scale. On that occasion valuations were made of the various properties. It is customary to get valuation reports made in connection with the floatation of an Estate Co. Mr. George Fellowes was a well known Valuator. His work in Ceylon was visiting estates and valuing them, while superintendent of Hapugastenne Estate, Ratnapura. Our Firm employed him to make a valuation of these properties. Mr. George Fellowes has not left the Island and he is Director of a Company in London. He sent us a valuation with a covering letter. I produce the

covering letter sent by him marked P163 and the valuation report of Ambulugala P164 and Kempitikanda-Yatimahana P165. (Objected to on the ground that Mr. Fellowes has not been called. I allow the documents to be put in as there is evidence that Mr. Fellowes has left the Island, and further that this witness has spoken to that fact).

I produce the valuation report for Leuke (P166), and for Barrington (P167). The report states that Ambulugala division is between Leuke and 30 Karandupona Estate, That Karandupona was the Estate of which Mr. J. G. Craib was superintendent. Mr. George Fellowes is a director of Ceylon and Eastern Agency, London.

On an assessment P77 I find that my Firm has appealed against the assessment. The assessment for P77 was made by Mr. Gorton.

Q.—Are P164 to P167 the identical documents sent to you by \cdot Mr. George Fellowes or copies made by your Firm?

A.—They are not copies made by us in our office, but they are made by Mr. Fellowes himself. Each sheet of P164 to P167 has the note-head bearing the words from (Hapugastenne Group, Ratnapura), which was the residence of Mr. George Fellowes. (P164 to P167 objected to on the ground that they have not been proved to be copies of the original valuation reports. Admitted subject to objection). I paid him for those valuations. In my answers in evidence, I have used the word "I"---I mean my Firm. I produce letter dated 31.3.36 (P168) from Mr. Fellowes

No. 17 Plaintiffs Evidence I. J. Montgo-merie Examination -Continued.

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No. 17 Plaintiff's Evidence I. J. Montgomerie Examination --Continued.

to my Firm. My Firm drafted another skeleton prospectus, which I produce marked P169. My Firm appealed against this assessment when a valuation was made by Mr. Ditmus for the Tea Control. In the usual course of business the Tea Controller got valuations made. One was made by Gorton and the other by Ditmus. Both of them are out of the Island. I produce certified copies from the Acting Tea Controller marked (P170) and (P171). (Objected to. Admitted subject to objection).

> Intd. N. S., D. J., 31.1.52.

(Adjourned for lunch)

Trial resumed

L. J. MONTGOMERIE, recalled, sworn :

FURTHER XD :---I produce letter dated 22.4.44 (P172) and letter dated 26.4.44 (P173) written by my Firm, to the plaintiff. They refer to Mr. Hermon's report of 1942. (Objected to as they are not from proper custody).

ORDER—I find that the Company is the Agent of the plaintiff and therefore I overrule the objection and admit the documents.

L. J. Montgomerie Cross-Examination

XXD :—During the period 1931 to 1946 there were three directors and five assistants in our Firm. I became one of the three Directors 20 in 1946. Bois Bros. were financial Agents. I had never visited Kempitikanda Estate. As far as Kempitikanda Estate was concerned my Firm never had to inspect the estate, or even visited it for business purposes. I never visited the estate myself. I believe that Craib and Callander were superintendents of Kempitikanda Estate even prior to the assumption of the Agency by my Firm. I am unable to say this definitely without reference to books. By reference to the books I know that Craib and Callander claimed a certain acreage as forming Kempitikanda Estate. I was aware of the acreage of the estate as appearing from the books and returns furnished by the superintendent of the estate. We took over the 30 agency of this estate from Dodwell & Co. I am unable to say whether this acreage had been stated even to the previous agents. I am unable to say whether the same acreage had been also given to Dodwell & Co. I am not aware whether my Firm took over any books from Dodwell & Co. We took over an estate which was in existence. As far as I am aware Mr. Craib and Mr. Callander were proprietors of the estate and Mr. Craib also was superintendent when my Firm took over the Agency. To my knowledge, Mr. Callander was never superintendent of this estate. The estate was a functioning concern as we could have inferred from its returns. It was in existence when we took over. It was not my business 40 to verify the acreage given in the returns.

During 1931 to 1946 I went on leave on three occasions. I joined this Firm in 1925. I went on leave for six months each time in 1929, 1934 and 1938.

No. 17 Plaintiff's Evidence I., J. Montgomeric Cross-Examination —Continued.

I do not know whether Peries, the plaintiff's husband, had any shares in Lellopitiya Estate. Without reference to documents I cannot answer to facts pertaining to groups of Estates I manage.

Q.—Have you an independent recollection of the fact of the appeal made by Kempitikanda Estate for increasing its assessment?

A.—I have, because I saw the correspondence.

10 The matter of the appeal was worked up by the owners. Mr. Rodale was superintendent for about 8 or 9 years, from 1931 to 1939, but during this period he had gone on leave. I was not in the Island in 1945, and I cannot say whether he was superintendent in 1945. I was not in the Island in 1944 also. I was recalled to the Indian Army in 1940 and I was away from the Island in India till 1945 November. My knowledge of this period 1940 to 1945 is derived from the correspondence I saw when I resumed office. The estimates I have produced—P155 and P156 were prepared by the superintendent. It is the planting practice to send a return every year for the estate. Because they were prepared by the proprietors we did not think it necessary to scrutinise them or sanction 20 Returns P127 to P137 were prepared by the Superintendent. them. In regard to the returns, they were scrutinized. The returns were made from the books of the estate, and they would be scrutinized by our firm for arithmetical accuracy and checking of the Bank balance. We had to do this checking as the proprietors would owe us moneys.

Q.—You were concerned with the financial aspect of the running of the estate ?

We were concerned with the finance and the produce harvested, 30 reached, us and sold.

We take the figures given in the reports as correct because they have been prepared and vouched for by the superintendent. My firm drew a commission on the disposal of the produce.

Q.—The owners did not expect of you that you should see that the estate was properly managed ?

A.—That was done by the owners.

Normally we take the superintendent's figures as correct. (Shown P159). It is the Estate ledger. It was not kept by my firm. (P158) is also an Estate ledger kept by the Estate. P160 is also an estate ledger.

A.—Yes.

No. 17 Plaintiff's Evidence L. J. Montgomerie Cross-Examination —Continued. P158 to P162 were not kept by our Firm. P161 and P162 are journals, and they were not kept by our firm. (Shown page 13 of P159). I cannot explain or say anything about the entry on that page reading as follows :—"Weeding Yatimahana and Ambulugala." I know nothing about the entries in the books P158 to P162. (Shown page 4). (Item No. 21 read out). I do not know anything about it.

Except from the returns, I have no personal knowledge, of the acreage possessed by Kempitikanda Group. I do not know on what basis of assessment coupons were issued to Kempitikanda Estate for each particular year. I do not know the basis of assessment for any year, except from the correspondence.

(Shown P75). Q.—Were you interested in the floatation of the Company, except as agents?

A.—At the time P75 was prepared I was only an assistant of the firm and I had no knowledge of the affairs between the directors of the firm and the owners of the property. (Shown P163). It is a letter from Mr. George Fellowes. P165 came out of the same file as P163. I took them out here in Court. Except for the fact that the note-heads were from the same estate, and to some extent the contents of that letter, I cannot personally say whether P164 and P165 came with P163, **but I have** every reason to believe that they came together, as I found them in the same file. I have no recollection at all of the assessment prepared by Mr. George Fellowes as I was only an assistant in the firm at the time. I do not know on what material any valuer, and much less Mr. Fellowes, makes his valuation. (P164 referred to). We had no survey plans in our office relating to Ambulgala division. I understand that the dispute in the present case is with regard to Ambulugala division. I inferred that from the documents I had to produce or handle in this case.

P164 has not been signed by Mr. Fellowes, nor P166, P165.

P75 is only a draft. (Shown P157). It does not refer to a survey 30 plan from which the acreage could have been obtained.

Mr. A. P. Craib was for many years on Lellopitiya Estate, Ratnapura. He was never resident on Kempitikanda Estate. (Shown P170). There is a statement that Mr. R. P. Gorton was told that a plan of Ambulugala was in existence but that it was not available.

Q.—Are you in a position to show that the proprietors of Kempitikanda Estate were in possession of 150 acres tea in Ambulugala division?

A.—My firm are not the Agents of Kempitikanda Estate any longer and we have practically no knowledge of the affairs of the estate at all now.

Q.—During the period that you were the Agents, could you say whether you were aware that Kempitikanda Estate was in actual possession of 150 acres of tea in Ambulugala division ?

A.—No.

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Q.—Can you by a perusal of any of the documents, returns or reports produced in this case by you show that the Kempitikanda Estate was in possession of 150 acres of tea of the Ambulugala division?

A.—From the estimate made by the superintendent in 1932 (P155) it is reasonable to suppose that Ambulugala was in production and getting 80,000 lbs. for the year, which is 500 lbs. per acre. (At page 3). (Shown P137). In P137 there is shown a return that 78,506 lbs. of tea were produced for the 11 months ending November, 1944 from 301 acres of tea which consist of Kempitikanda, Yatimahana and Ambulugala.

The Kempitikanda estate appealed and we acted as their agents to prosecute the appeal. I know that in appeal the assessment was increased, but I cannot say up to what extent.

Q.—At an estimate of 400 lbs. per acre for 300 acres there should be 120,000 lbs. ?

A.—No, because this estate was in the habit of selling coupons and did not produce the tea.

Q.—Do you know what amount of tea had been produced and what coupons had been sold?

A.—No.

I know that at certain times the estate was not plucking at all.

Q.—Is there anything in the documents to show that the full estate has not been plucked—in tea ?

A.—The crop return would not show that.

I produce letter dated 2.2.39 (P174) from Mr. A. P. Craib to Bois Bros., in which he states there is no normal production on the estate owing to certain reasons given by him in this letter. I know from my personal knowledge that from February, 1939 to February, 1940 no tea was produced other than 2,900 lbs. in February, 1939. I was not in the Island in 1944 and I do not know whether coupons ceased to exist from 1944. The estimates for the other years are not available. The estimates for 1932 to 1933 were found during a search in Bois Bros' Office. Plaintiff's husband, Mr. Peries, was asked to go to the office of Bois Bros. and remove any documents he needed. I cannot answer as to whether a note was kept of the documents removed by the plaintiff's husband. Most of the correspondence was destroyed by the firm during the War as

REXXD :—P155 bears on it the firm's rubber stamp dated 11.4.32. A. D. Callander has initialled approval on 6.4.32.

a safety procedure. These documents were found in a director's room.

L. J. Montgomerie Re-Examination

Rodale himself was on War service during the time I was away from40 the Island. The reports for the years 1942 to 1944 are signed by Rodale. I identify the signatures on those documents. Rodale was here in 1944.

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No. 17 Plaintiff's Evidence I. J. Montgomerie Cross-Examination —Continued. No. 17 Plaintiff's Evidence L. J. Montgomerie Re-Examination --Continued.

I have no personal knowledge that the owners of Kempitikanda Estate were in possession of 150 acres of tea of Ambulugala, but I have no reason to doubt the statements made to the firm in the documents.

The crop figures on an estate depend on the state in which the estate is kept.

There is a letter from A. P. Craib dated 18.3.32 in the file.—I produce it marked (P175). (Objected to on the ground that (1) it has not been listed, (2) it should have been produced in Xn. in chief. Mr. Perera states that all the correspondence with Bois Bros. has been listed and (2) that this letter has to be produced in view of the position taken by the defence in XXn. based on calculation from the figures in the returns.

ORDER—I allow the document).

REXXD :---CONTD.--Besides 1939 to 1940, I know that no tea was produced in 1941.

XXD. WITH PERMISSION OF COURT :---

Q.—Have you the letter to which P175 was a reply?

A.—There is that letter in the file. I produce it marked P176.

P175 is a reference to the estimate for 1932.

It is not usual to estimate for blocks. It is usual to estimate for the whole estate. I do not know for what portions it refers to.

Q.—Do you know whether at that time the entirety of Kempitikanda had been planted in tea or not?

A.—I do not know.

Intd. N. S., D. J., 31.1.52. 10

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Mr. Advocate Perera states that his witness Mr. W. Hermon has been taken ill suddenly, and produces a medical report. He moves that the case be postponed as Mr. Hermon is their last witness.

Mr. Advocate Gunaratne states that this case has been fixed for today 30 and tomorrow specially and moves for costs of tomorrow, 1.2.52.

Trial is refixed for 19.2.52.

Plaintiff to pay defendants Rs. 262/50 as costs of 1.2.52.

Intd. N. S., D. J.

Plaintiff's Evidence W. Hermon Examination

No. 17

Appearances as before for plaintiff.

MR. ADVOCATE N. E. WEERASOORIA, Q.C., with MR. ADVO-CATE C. R. GUNARATNE and MR. ADVOCATE R. S. WANA-SUNDERA instructed for defendants.

WILLIAM HERMON, sworn, Planter, Belungalla Estate, Kadugannawa:
I am at present a proprietary planter. I was a planter in the Kegalla District, on Ambanpitiya Estate for 38 years. I have also been a Visiting Agent. I have made valuations. I was often engaged by the 'Tea
Control Department to make assessments in respect of tea and rubber properties. I knew A. P. Craib and J. G. Craib. (Shown P79). It is a Tea assessment report on Kempitikanda Estate made by me. At the request of Mr. A. P. Craib I visited Kempitikanda Estate. The total extent is stated as 301 acres—Ambulugala 150 planted in 1927 and Kempitikanda 151 planted in 1929. I was taken round the estate by Mr. A. P. Craib. Mr. A. P. Craib stated the total acreage. I have stated in P79 that I first visited Ambulugala Division, which is the oldest planting.

I made a valuation again in 1942. I produce a copy of that valuation
(P83) dated 1.2.42. I was at that time on Ambanpitiya Estate. There I state that at the request of Mr. A. P. Craib I visited the estate and was shown round by Mr. H. C. Rodale, the superintendent. I state there that I was shown no plan, but the acreage is stated to be—tea in bearing 1927, 150 acres; 1928—151 acres.

The tea-block extends up to the Colombo/Kandy road.

To bring an acre of tea into bearing, it would cost about Rs. 2,500/-to Rs. 3,000/-. That is without any buildings such as superintendent's bundalow, lines, etc. It is the bare cost of planting and bringing it into bearing, without the value of the land. The bare cost of planting and bringing into bearing an acre of tea in 1927 might have been about Rs. 650/- to Rs. 750/-. That is without providing for any buildings.

XXD. BY MR. WEERASOORIA :—In regard to the acreage of Ambulugala, I myself did not check it up, because I had no plan. No plan was produced before me. The extent in my report is put down on a statement made to me by Mr. Craib. The figures I worked out in regard to production are on the assumption that that statement was correct. (Shown P83). (Last paragraph referred to). The estate had been assessed as having a certain productivity, but on the crop figures shown to me the actual production had been 274,596 lbs. less in the first four years. It is the result of so much leaf not produced, may be due to non-plucking or due to the extent being less.

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W. Hermon Cross-Examination

No. 17 Plaintiff's Evidence W. Hermon Cross-Examination -Continued.

I also inspected Uduwewela Group as an Assessor of the Tea Control Department. It was registered as TZ III. (Shown D12). It is dated 11.7.38. I inspected the estate on 30.6.38 and I was shown round by Mr. Gordon. That was the estate of Mrs. Charlotte Fernando (1st defendant). Three plans were shown to me. In my report I state the acreage, and in the last page I give a summary of the different blocks, stating what is in tea, young tea, seed-bearers, unplanted and not in tea. What I say "in tea" must be that extent in normal production as distinguished from young tea. I have stated in the report that the proprietor gave me a tracing of plan 1340 initialled P.F.G., dated 28.4.38, which he states is the actual area in tea, and with which I agreed. I was satisfied on inspection that that particular area was in tea as stated to me. (Shown D13). It is a letter written to Mr. M. S. Fernando by the Tea Controller. Attached to D13 is D13(a), the tracing attached to the letter. That is the tracing initialled P.F.G., which the proprietor handed to me and which I checked on the ground. The inspection by me was in 1938. I had already gone to Ambulugala division in 1934 and I subsequently went to Ambulugala division in 1942. The land which I inspected as Uduwewela Estate was a different land to that which I inspected as Ambulugala division. If I went to the same land twice I would have 20 identified it and reported so to the Tea Control Dept. My first inspection was at the request of the Tea Controller to inspect the lands of the proprietors of the proprietors of Kempitikanda and Ambulugala. I knew the proprietor, Mr. Craib very well. In 1942 I again inspected Ambulugala and Kempitikanda for valuations. If the same block was claimed by two different parties, I would have realised that there was a conflicting claim and would have reported to the Tea Controller.

Mr. Rodale went round with me in 1942. Mr. Rodale was in Yatederiya and he was overlooking Kempitikanda. Mr. Gordon showed me round Uduwewela.

W. Hermon Re-Examination

REXXD:-In my report P83, I say at the end that I overlooked making reference to excess of tea coupons over crop during the first four years. When I stated that, I meant the first four years of Tea Control. The first year of Tea Control must be 1932/33 or 1933/34. In my report D12, I say on the face of it that no records were available. In D12 I say that the proprietor gave me three plans and stated the acreage to be as follows :---Plan 1342----18 acres 0 roods 18 perches, plan 1444—7 acres 3 roods 3 perches, and plan 1340—54 acres 1 rood 7 perches. The total is shown as 80 acres 0 roods 28 perches. I state on the face of D12 that I checked the acreages and found the first two correct—that is the 18 acre block and the 7 acre block. D13a shows that the 18 acre block was called Taradenitenna. The 7 acre block sas called Koskolawatta. I do not say that I checked the third extent of 54 acres on the ground and found it to be correct. I merely say that I agreed with the sketch given to me by the proprietor. I could not tell you now but I think I was satisfied. I cannot remember who P. F. G. was.

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The proprietor gave me a tracing of the areas in tea. I cannot remember whether D13a was the identical tracing given to me. It is not signed by me, nor do I know anything about the letter D13. I cannot remember who M. S. Fernando is. On D13a is shown what the surrounding lands are planted with. In the report itself I have shown various blocks. According to plan D13a, it includes the 18 acre block and the 7 acre block. The balance 50 acres is described as Uduwewelawatte. With regard to the balance 50 acres, my report shows a block of 40 acres, a block of one acre and a block of two acres, and a block of tea-seed 10 bearers 2 acres and 33 perches.

I knew A. P. Craib and Rodale. Rodale was a planter on Vataderiya Estate. A. P. Craib came from Ratnapura. J. G. Craib was on the adjoining Estate.

> Intd. N. S., D. I., 19.2.52.

No. 18

PLAINTIFF'S APPLICATION FOR A COMMISSION TO RECORD H. C. RODALE'S EVIDENCE

No. 18 **Plaintiffs** Application for a Commission to record H. C. Rodale's Evidence 19.2.52

20 At this stage Mr. Advocate Perera moves that a commission be issued to record Mr. Rodale's evidence. He files the necessary papers and hands over a copy of the same to the defence.

Mr. Weerasooria objects to the application on the following grounds :---

- (a) that it is belated
- (b) that the case was put off today only to examine Mr. Hermon, the last witness of the plaintiff, after which the plaintiff was to have closed his case
- Mr. Rodale was the plaintiff's own superintendent and no appli-(c) cation was made earlier to issue a commission to record his evidence
- (d) the affirmant in the affidavit is one Sheriff and not Mr. Peries. the husband of the plaintiff, who should have made the affidavit.

Mr. Weerasooria states that the allowing of this application would protract this trial and cause great expense to the defendants.

MR. PERERA IN REPLY—states that the documents, namely monthly reports, P84, and the other evidence that it was Mr. Rodale who took the various visiting agents round these properties-which had been admitted subject to objection-all may require that Mr. Rodale will

No. 18 Plaintiff's a Commission to record H. C. Rodale's Evidence 19.2.52 -Continued.

have to be summoned as a witness, so that all the documents produced Application for may be properly admitted. He cites 53 N.L.R., 186 at page 188 and section 423 C.P.C. Also 21 C.L.W. 34 at page 36. Annual Practice 1946—1947 page 684.

> MR. WEERASOORIA STATES :- that there is no material before Court that Mr. Rodale's evidence is going to support the plaintiff's case. There is no affidavit from bim.

He also states that the stage at which this application could be made has well passed. He cites 42 N.L.R. 415 at page 418. He states that the plaintiff, having ascertained the pinch of the case, cannot now be given an opportunity of supplementing his evidence. The party was well aware of the materiality of a certain witness and that witness cannot possibly come into the case at the end of the case. It may be an error of judgment of the plaintiff, but the defendant cannot suffer for that. Mr. Rodale's statement or affidavit is not here to say that he is unable to come to Ceylon or that he would not have come if he was asked to come.

Intd. N. S.,

D. J., 19.2.52.

(Adjourned for lunch).

No. 19 Order of the District Court refusing Plaintiff's Application for a Commission to record H. C. Rodale's evidence 19.5.52

No. 19

ORDER OF THE DISTRICT COURT REFUSING PLAINTIFF'S APPLICATION FOR A COMMISSION TO RECORD

Trail resumed

H. C. RODALE'S EVIDENCE.

Order

This is an application made on behalf of the plaintiff in this case under section 423 of the Civil Procedure Code that a commission for the examination of Mr. Rodale, who is presently resident in England, be issued. The affidavit in support of this application is affirmed to by one K. M. Sheriff, who states in the affidavit that "he is presently in charge of the 30 plaintiff's estate in respect of this case which is pending and that he attends to their affairs." The name of Mr. Rodale appears on the list of witnesses filed in this case on 25.1.51. The trial in this case was commenced on 19.7.51 but there is nothing on record to show that the plaintiff had taken any steps to get Mr. Rodale to give evidence in this case, neither is there any affidavit or statement from Mr. Rodale that he is unwilling to come to the Island to give that evidence the plaintiff wants him to give or that Mr. Rodale is physically unable to travel to the Island to give

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that evidence. Further, if the plaintiff seeks to have the evidence of Mr. Rodale merely because certain documents produced by him in the case may be properly admitted or elucidated by the evidence of Rodale, then the plaintiff should have taken the necessary steps to procure Application for Mr. Rodale to give evidence in this Court or made this application to examine him on a commission immediately after the plaintiff realised that Mr. Rodale's evidence would be necessary or material to his case. On the other hand, at the end of the proceedings of the last date, namely 31.1.52, learned Counsel for the plaintiff had stated that Mr. Hermon, who had given his evidence today, was the plaintiff's last witness. It is therefore 10 evident that this application is belated and would, if allowed, cause hardship to the defence, as stressed by Mr. Weerasooria. For these reasons, I refuse the application.

Sgd. N. SIVAGNANASUNDRAM,

D. J., 19.2.52.

Order delivered in open Court.

Intd. N.S., D. J., 19.2.52.

No. 20

PLAINTIFF'S APPLICATION FOR POSTPONEMENT OF CASE

At this stage Mr. Advocate Perera moves that the further hearing in this case be postponed to enable him to appeal from my Order on his application to have Mr. Rodale examined on a commission, and states that he is not in a position to close the case for the plaintiff without having Mr. Rodale's evidence. He cites section 143 C.P.C.

Mr. Weerasooria cites section 163. He states that the case must proceed since there is no valid reason to grant an adjournment. Even **30** if the plaintiff has filed a petition of appeal from the Order delivered by Court today, the position would not be different. He cites 20 N.L.R. 321 at pages 325 and 326. Mr. Weerasooria states that he opposes the application of the plaintiff, and further states that he has evidence today in Court to lead and desires that I should hear his case if the plaintiff has no further evidence to call in support of his case.

> Intd. N. S., D. J., 19.2.52.

Plaintiff's a Commission to record H. C. Rodale's Evidence 19.5.52 -Continued.

No. 20 Plaintiff's

Application for postponement of case

19.2.51

No. 19 Order of the

District Court

refusing

108 No. 21

No. 21 Order of the District Court refusing postponement 19.2.52

ORDER OF THE DISTRICT COURT REFUSING POSTPONEMENT

Order

This is an application by learned Counsel for the plaintiff for an adjournment of the trial after the Order refusing his application for a commission to examine Mr. Rodale had been refused. Mr. Perera states that since he desires to appeal from that order, he may be given an opportunity of doing so especially because, in his view, the evidence of Mr. Rodale will be very material to his case. He also states that the Court can under Section 143 of the Civil Procedure Code adjourn hearing if it is found to be necessary for reasons to be recorded and signed by the Judge.

Mr. Weerasooria opposes the application and states that it is not a case of the plaintiff having cited or summoned a witness and that witness not being present, but that the plaintiff had made an application for a commission **and when** that application had been refused, he moves for an adjournment to test that Order in appeal. It seems to me that there is no valid ground on which I can adjourn the hearing of the case. So far as this Court is concerned, the application for a commission had been refused, and if the plaintiff's application for an adjournment is really to get, if he can, Mr. Rodale's evidence and that too taking for granted that the Order of this Court on that application will be reversed, it seems to me that the present application for an adjournment is without merit. I have therefore to refuse the application for an adjournment.

> Intd. N. S., D. J., 19.2.32.

Mr. Perera has no further evidence to call. At this stage I call upon Mr. Perera to read in evidence his documents produced and marked by him.

Mr. Perera reads in evidence PI to PI76. These documents are admitted subject to the objections taken as recorded earlier in the evidence.

> Intd. N. S., D. J., 19.2.52.

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No. 22

DEFENDANTS' EVIDENCE

No. 22 Defendants' Evidence C. L. Ratwatte Examination

Defence : Mr. Weerasooria calls :

C. L. RATWATTE. affd., 56, retired Ratemahatmaya, Mawanella: I retired in 1944. I was R.M. for 24 years of Galboda and Kinigoda Korales. The lands which are the subject matter of this action are situated within those Korales. In the course of my duties I have had occasion to deal with claims for settlement of lands in the area. These provinces are Kandyan provinces. Forest and chena properties are regarded as belonging to the Crown. Where an application is made for 10 settlement of Crown land, the usual procedure is to make a survey called a Block survey. If or that purpose a surveyor goes to the land. When he is making a survey, he camps out somewhere there and surveys the land. He makes a survey on the application of the person who has applied for a land. He will make a survey and block it into separate portions. He got to consult the applicant, and if necessary the Headman. While he is making the survey anybody can come before him and claim the portions that he is blocking out, and he would record that. After the block survey is done, the land is advertised in the gazette and after that notices are sent from the Kachcheri to the Chief Headman to be

20 posted on the land, calling for claimants if any. Apart from posting notices, there is a publication by beat of tom-tom on the land and in the surrounding villages. An inquiry is held after that by the Chief Headman. At that time I was the Chief Headman. After the inquiry of the Chief Headmen, I send in my report to the A.G.A. and in that I state what the blocks are and the claims that were made before me. I would state who is in possession, and the ages of the plantations if there are any. After my report is sent the claimants are informed by Government to appear at the inquiry before the A.GA. in the Kachcheri. After the inquiry, 30 if there is one claimant the land is settled on him, and if there are two or three claimants, the A.G.A. may not decide on any claim. When the land is given to a claimant, a document is issued in his favour. I have dealt with about 50 such cases in the course of my career and I am conversant with the procedure.

(Shown D2) (*Gazette* dated 24.1.1930). Lots I to 29 have been gazetted under the head—Land Sales in the Province of Sabaragamuwa : Notice—Kegalla No. 23/. In regard to these particular lands I had occasion to go for an inquiry and I sent in a report. (Shown D14). This is the report I sent. The 29 allotments there are allotments which D14 states are lots in preliminary plan 3994. I produce the preliminary plan 3994 (D15) made by K. H. Jansz, Licensed Surveyor. (Objected to by Mr. Perera. I admit it subject to proof that Mr. Jansz is dead).

In my report D14 all the lots are claimed by Mrs. C. M. Fernando (1st defendant). Before I made D14 I went to the land and I have made a statement there not only in regard to the persons who claimed but also in regard to the plantations. The facts stated in D14 are true. My

No. 22 Defendants' Evidence C. L. Ratwatte Examination ---Continued.

report is dated 3.12.29 and I must have gone about 1¹/₂ months before that to the land. In this case I directed notices to be issued to the Villages in the usual way. On 25.2.30 I received a letter (D16). (D16a) is my reply. When I go for inquiry I inspect the blocks. I inspected each of the 29 blocks. Anybody who had a claim, put forward a claim before me. The only person who claimed was Mrs. M. C. Fernando (1st defendant).

To make a block survey, a surveyor would normally take about a month. It would have been well known in the Village that these lands were being claimed and I was to make an inquiry.

(At this stage Mr. Perera states that he has just now looked at D15 10 and that D15 is not signed. He objects to D15 being produced. Mr. Weerasooria states that D15 is a public document having been issued by the Surveyor General. At this stage Mr. Weerasooria states that he will mark a certified copy of D15).

XD. CONTD :--- The application for settlement was P117. I am not personally aware of the application (P117). It would be sent to the Government Agent. I cannot say whether it was forwarded to me at the time of the inquiry.

Subsequently the Government issued in this **connection** a grant to Mrs. Fernando. (It is marked D17 dated 7.8.1930). It was for four 20 blocks of land as shown in title plans attached, marked D17a for 25 acres 3 roods 14 perches issued to Mrs. C. M. Fernando (1st defendant), and also title plans for I acre 3 roods 34 perches (D17b), I acre 27 perches (D17c) and 10 perches (D17d).

C. L. Ratwatte tion

XXD:—The block survey is generally made by a Government Surveyor. Cross-Examina- The 50 settlements I took part in were all over the District where I have worked. What I called a block survey is always made by a Government Surveyor. I referred to certain blocks in my report D14. Those blocks were taken from the plan sent to me for report. I cannot remember what that plan was. I do not remember whether the plan that was 30 sent to me was made by a private surveyor. If it was made by a private surveyor, I would not attach the same importance to it as to that made by a Government surveyor, in the case of a block survey.

> Intd. N. S., D.J., 19.2.52.

At this stage Mr. Perera states that since a certified copy of plan 3994, which should be marked D15, has not been produced, he is unable to cross-examine the witness.

I ask the witness to stand down. He will be recalled for further 40 XXn. after Mr. Weerasooria produces a certified copy of the plan to be marked (D15).

> Intd. N. S., D.J., 19.2.52.

Mr. Weerasooria calls :

No. 22 Defendants' Evidence Mrs. R. M. Phyllis Petera Examination

MRS. R. M. PHYLLIS PERERA. sworn, 42, wife of Dr. A. F. S. Perera, Colombo: I am the 2nd defendant. My mother is the 1st defendant. My mother and I have filed answer in this case making certain claims to the land which the plaintiff has claimed. One of the lands claimed by the plaintiff is depicted in plan No. 1077 marked (Y) in this case. I know that land Taradenitennehena. That land was originally owned by G. Somananda on deeds 3403 of 10.2.88 (D18) and 2747 of 19.7.98 (D19). Somananda conveyed the property on deed 7729 of 16.7.18 (D20) to two persons, Dingiribanda and Wijeratue. Dingiri Banda conveyed his interests on 10 deed 8486 of 1919 (D21) to Wijeratne, who conveyed on deed 4321 of 1920 (D22) to T. B. Boyagoda, who by deed No. 754 of 1925 (D23) conveyed his interests to D. A. R. Senanayake, who by deed 755 of the same date (D24) conveyed his interests to C. W. Peiris, Ferdinando and De Mel, all three of whom by deed No. 758 of the same date (D25) conveyed their interests to Batuwantudawa, who by deed 776 of 1925 (D26) conveyed the same to F. R. Senanayake. In deed 776 Peiris, Ferdinando and De Mel also joined. F. R. Senanayake died and the executor of his estate by deed 338 of 1926 (D27) conveyed those interests 20 to H. W. Boyagoda. H. W. Boyagoda by deed 339 of 1926 (D28) conveyed those interests to D. A. R. Senanayake, who by deed 1065 of 1928 (D29) gave a conveyance to the 1st defendant, my mother, in which H. W. Boyagoda joined. Subsequently a deed of rectification 31811 of 1928 (D30/P119), was executed in favour of 1st defendant. My mother gave in my favour a deed of gift 1046 of 1936 (D31) for the lands in schedule Taradenitennehena is lot 18 in schedule A, and I A of the plaint. claim Taradenitennehena in extent 18 acres 1 rood 14 perches on that title.

I claim 28 acres 3 roods and 35 perches of the land depicted in 30 plan 1078 (X) on Crown Grant D17 of 7.8.1930.

> Intd. N. S., D. J., 19.2.52.

At this stage I adjourn proceedings. It is 3-47 p.m. Further hearing on 17.3.52.

Intd. N. S., D. J.

19th Feb. 1952. J.S.

No. 23

No. 23 Petition of Appeal of Plaintiff against the Orders of 19th February 1952 21.2.52

PETITION OF APPEAL OF PLAINTIFF AGAINST THE ORDERS OF 19th FEBRUARY 1952

IN THE HONOURABLE THE SUPREME COURT OF THE DOMINION OF CEVLON.

D. C. Kegalla. Case No. 6269.

Vs.

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- I. MRS. CHARLOTTE MARY CLARE FERNANDO of "Credon", 18, Castle Street, Colombo.
- 2. MRS. RENIE MARY PHYLLIS PERERA, wife of DR. A. F. S. PERERA, presently in Colombo......Defendants.

MRS. CECILY HARRIET MATILDA PEIRIS of Campbell Place, Colombo, presently in England......Plaintiff/Appellant.

and

- I. MRS. CHARLOTTE MARY CLARE FERNANDO of "Credon", 18, Castle Street, Colombo.
- 2. MRS. REINIE MARY PHYLLIS PERERA, wife of DR. A. F. S. 20 PERERA, presently of Colombo.....Defendants/Respondents.
 - To The Honourable the Chief Justice and the other Honourable Justices of the Supreme Court of the Dominion of Ceylon.

On this 21st day of February, 1952.

The humble petition of appeal of the plaintiff-appellant appearing by her Proctor L. A. Goonewardene showeth as follows :----

1. The plaintiff-appellant in this case is suing the defendantsrespondents for a declaration of title to the lands set out in the schedule to the plaint and depicted in plans Nos. 1078, 1077 and 1079 filed of 30 record and marked X, Y and Z respectively and for costs and damages.

2. The defendants-respondents filed answer denying plaintiff's title and setting up title in themselves and praying that plaintiff's action be dismissed with costs. 3. Several issues were raised at the Trial including the issue of Prescription and the trial has been carried on on several dates during which time up till the 19th day of February, 1952 only the plaintiff's case was being presented.

No. 23 Petition of Appeal of Plaintiff against the Orders of 10th February 1052 21.2.52 —Continued.

4. On the 19th day of February, 1952 after the evidence of Mr. W. Hermon learned Counsel for the plaintiff-appellant filed **in open** Court Petition, affidavit and motion handing over a copy of the said papers to the learned Counsel for the defendants-respondents and made application to issue a commission to England to obtain the evidence of one H. C. Rodale *alias* Rowbotham, before closing the plaintiff-appellant's case.

5. The said application by the plaintiff-appellant was objected by the defendants-respondents and the learned District Judge after hearing the arguments adduced by Counsel for each party made order refusing the plaintiff-appellant's application : The plaintiff-appellant's counsel then made application to Court to adjourn trial in the case pending an appeal on the court's order which was to be made to Your Lordship's Court and this application also was refused.

6. The learned District Judge thereupon called upon the plaintiff 20 appellant's Counsel to read in evidence the documents produced in proving the plaintiff appellant's case and called upon the Counsel for the defendants-respondents for their defence and the defendants-respondents have now begun their case.

7. Being aggrieved by the said orders made by the learned District Judge the plaintiff-appellant begs leave to appeal therefrom to Your Lordships' Court on the following among other grounds which may be urged by Counsel at the hearing of the appeal.

- (a) The said orders made on the 19th day of February, 1952 were contrary to law and against the weight of evidence led in the case, and presented in support of the application made by plaintiff-appellant.
- (b) The materiality of the evidence of Mr. H. C. Rodale *alias* Rowbotham had to be determined by the learned District Judge and not by the plaintiff-appellant.
- (c) It is respectfully submitted that it would have been premature to apply for a commission to examine Mr. Rodale until the learned District Judge was fully appraised of all the facts to which he could speak.
- (d) It was only on the previous date of trial to wit 31st January, 1952 that the plaintiff-appellant's late agents though Mr. L. J. Montgomerie deposed to the fact that the books produced by him and marked P158 to P162 were books kept on the Estate which was then under the direct control and supervision of Mr. H. C. Rodale.

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No. 23 Petition of Appeal of Plaintiff against the Orders of 19th February 1952 21.2.52 —Continued. (e) The matter became vital when Mr. W. Hermon gave evidence on the 19th February, 1952 stating that he had been shown round the properties of both plaintiff and defendants which were different properties. The plaintiff-appellant's properties were pointed out by Mr. H. C. Rodale to Mr. W. Hermon and his (Mr. Rodale's) evidence therefore could be conclusive of the possession of the plaintiff's lands in dispute in this case, especially as he was in charge of these lands for a number of years.

- (f) Although the document P84 was produced and spoken to the 10 defendants-respondents wanted an opportunity to cross-examine Mr. Rodale.
- (g) It is submitted that at whatever stage application was made for issue of a commission, the trial would be delayed and the fact that the application was made at the end of plaintiff-appellant's case would not make it longer than if the application was made at some other time.

8. It is submitted that in deciding to make the application at the end the plaintiff-appellant was influenced by two reasons namely (a) That the learned District Judge would be in a position to judge the materiality of the evidence sought to be obtained on commission (b) that the defendant-respondents may have all the documents to which Mr. Rodale was able to speak before them for cross-examination.

Wherefore the plaintiff-appellant prays that Your Lordship's Court be pleased

- (a) To set aside the order made on 19th February, 1952 by the learned District Judge refusing the plaintiff-appellants application for the issue of a commission to record the evidence of Mr. H. C. Rodale.
- (b) To order that such a commission do issue to some proper person 30 or Court in England to examine and record the evidence of Mr. H. C. Rodale.
- (c) To give such further orders and directions as Your Lordship's Court shall deem necessary to carry out such order
- (d) For costs of this application and
- (e) for such other and further relief as to Your Lordships' Court shall think fit and necessary in the premises.

Sgd. L. A. GOONEWARDANE, Proctor for plaintiff-appellant.

Settled by :

Sgd. CYRIL E. S. PERERA, Advocate, Colombo.

No. 24

DEFENDANT'S EVIDENCE

No. 24 Defendant's Evidence. C. L. Ratwatte 17.3.52. Vo. 24 Defendant's Evidence. C. J. Ratwatte

Appearances as before.

C. L. RATWATTE, recalled, affd.

FURTHER XD :---(Shown D15). It is a certified copy of preliminary plan No. 3994.

XXD :---There were about 50 settlements to which I had attended. When a portion of Village lands is to be settled under the Land Settlement 10 Ordinance, and the Crown Surveyor surveys that portion, that is known as a Block Survey; without dividing up the land surveyed into allotments. It may be that in a block survey an entire village or villages may have to be surveyed. The evidence I gave about a block survey on the last date is about the block survey of a village or villages as stated by me today. When the survey is made of a land to be settled on an individual on application, that survey is known as an "Application Survey." An application-survey is always made by a Government Surveyor sent at the instance of the A. G. A. of the district. I have never come across a case in which an application-survey has been made by a private surveyor. 20 Application surveys are never made by private surveyors because the Crown requires those surveys to be accurate. Even if an application is made together with a plan made by a private surveyor, of the land applied for, the Crown will yet get an application survey made by a Government Surveyor because it will not be safe to act on the plan made by the private surveyor. If a private surveyor surveys a land for which there are several applicants, then those other persons can object to the survey being made.

I have been in the Kegalla District from 1913. I knew the late Mr. Karl H. Jansz, surveyor. He was practising in Kegalla. He was a 30 Commissioner of this Court. He was a private surveyor. I do not know where he died.

(SHOWN D15) I cannot say how D15 came to be made. I do not know when it was made or how it was made or who got it made. D15 shows that it was made by Karl H. Jansz. It shows that the boundaries were pointed out by Wereke Unnanse, L. B. Giragama and B. A. Mudiyanse. The last two were Gan Aratchis. As far as I remember, Wereke Unnanse was in charge of the land. He was looking after the land. He was not the owner of any land. I cannot remember if he made any claim to any land before me. (Shown D2). Wereke
40 Unnanse's name is not given as a claimant. There are blocks in D15. I do not know how those blocks came to be made by the surveyor.

I do not know whether there were any deeds available to the surveyor.

No. 24 Defendant's Evidence. C. L. Ratwatte Cross-Examination --Continued.

I had occasion to report on these lands. (Shown PI17). It reads that one Charlotte Fernando on 26.1.29 made an application for a settlement of a claim to land. I did not know anything about the application at that time. I have reported on that claim on 18.2.29. (PI77) is a certified copy of that report sent by me on 18.2.29. That is a correct report. I cannot identify the land which I have reported in P177 as being 18 acres of tea about 10 years old or even fix it in D15. I know the area in which this land is situated. I do not know who planted it. According to P177 it must have been planted some time in June and July of every year, that being the planting season.

D15 has been made in October, 1929. I cannot say whether a surveyor sends a report together with a plan like D15.

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(Shown D14). The particulars in D14 are usually filled up by me. The Headman helps me in this matter. Wereke Unnanse may have assisted me, but I cannot remember. He is dead. He was the incumbent of Dodantale Vihare at one time. Dodantale is the adjoining village. He was a land owner at one time. He owned lands up to the time of his death.

I did not know Craib or Callander. I knew Kempitikanda Estate. It was opened by my predecessor, Mr. H. W. Boyagoda, when I was a 20 clerk in the Kachcheri. H. W. Boyagoda was the owner, but I do not know whether he planted it alone or with the assistance of others. I left the Kachcheri in 1919. I was Korale up to 1920 and thereafter I was Ratemahatmaya. (Shown P117). P117 might have been sent to me with the whole file. P117 must have been sent to me.

C. I. Ratwatte Re-Examination REXXD:—Giragama was the Village Headman of Leuke and Mudiyanse was the Village Headman of Ambulugala. Wereke Unnanse was in charge of Mrs. Fernando's lands. On my inspection the blocks were as blocked out clearly on the ground. Land-marks had been put. The surveyor is responsible for the correct blocking out. He is assisted by the Headman and anyone in charge of the land. In respect of each one of the blocks shown in D14, particulars are entered. On the land I verified the correctness of these particulars. In D14 there is no tea about 10 years old in any one of those blocks. There is no extent of 18 acres of tea 10 years old in D14, nor is there a single block in which the age of any plantation is given as about $1\frac{1}{2}$ years old. The statements in D14 do not tally with the statements in P177 in regard to the plantations.

Q.—Are the blocks referred to in P177 the same as the blocks referred to in D14 ?

A.—No.

Q.—Is it correct to say that earlier you stated they refer to the same block ?

A.—Earlier I had stated that they referred to the same block. These are matters that I attended to 23 years ago, and I cannot remember.

There is nothing in P177 to say in respect of which land that report was written. In this connection I inspected over 50 lands in the Village of Parape, Gabbala, and mostly in Rambukkana area. Galboda and C. L. Ratwatte Kinigoda are also within my division. I visited a number of lands in those divisions. I cannot say today, without reference to the appropriate files, what the letters were which I wrote in respect of each particular inspection.

FURTHER XXD. WITH PERMISSION OF COURT :- The land surveyed in D15 falls within the divisions of the Headman of Leuke and 10 Ambulugala.

REXXD :---Nil.

Intd. N. S., D. J., 17.3.52.

MRS. R. M. PHYLLIS PERERA, recalled, sworn,

FURTHER XD:-To D17 were attached a number of title plans D17*a* to D17*d*. Mrs. Charlotte Fernando, the 1st defendant, is my mother. She made an application for a settlement—P117—on 26.1.29. In P117 there was a sketch of a plan of the land in respect of which the application 20 was made. The entirety of the land in plan 1078 (X) came within my title plan, except the portion below title plan No. 405308 between the Village boundary and the road-reservation on the south-east. The portion between the Village boundary and the road-reservation is called Aradana Ela Hena. On my behalf plan No. 1064 of 11.3.32 was produced before the surveyor,-marked (D32). It was made by Mr. Nugapitiya who is now dead. I claim the entirety of the land in plan (X) on the Crown grants and the title plans attached, and Aradana Ela Hena of which the plan is D32, which I claim on another title. Aradana Ela Hena belonged to Arawpola Lokukumarihamy, who conveyed the same 30 on deed 2036 of 1882 (D33) to H. W. Molligoda, who by deed 30369 of 1898 (D34) conveyed it to Punchi Banda, who by deed 3073 of 1902 (D35) conveyed to Idurus Lebbe, who died leaving Abdul Jabar and Abdul Cader. Abdul Jabar by deed 32581 of 1928 (D36) conveyed his interests to Ismail Marikkar. Abdul Cader by deed 654 of 1934 (D37) conveyed his interests also to Ismail Marikkar, who conveyed his interests to 1st defendant on deed 32584 of 1928 (D38) and deed 655 of 1934 (D39).

There was an action between my mother and Ukkuwa and Kira. I produce the decree in D. C. Kegalla case 9555 dated 7.12.32 (D40). My mother was declared entitled to the land in plan D32. My mother also claimed the entirety of the lands in plan Z-No. 1079, in extent 40 13 acres 1 rood 32 perches. They are made up of several allotments of land. (Names given by Counsel—Sidarampadeniya Egodahena, Bulanehena, Thotapoladeniya and Ganimehena). Sidarampadeniya was owned

Mrs. R.M. Phyllis Perera Examination

No. 24 Defendant's Evidence Re-Examination -Continued.

No. 24 Defendant's Evidence Mrs.R.M.Phyllis Perera Examination —Continued. by—1/2 jointly by S. M. Tikiri Banda and S. M. Dingiri Banda, who conveyed the same on deed 3251 of 1935 (D41) to Abeyratne Banda, who conveyed it on deed No. 4350 of 1939 (D42) to the 1st defendant.

The other half was owned by S. G. M. Punchi Nilame and S. G. M. Kiri Banda, both of whom conveyed it on deed 4212 of 1939 (D43) to the 1st defendant.

Bulanehena was owned by Ukkumenika and it devolved on Mutumenika, her daughter. Mutumenika by deed 4717 of 1940 (D44) conveyed the land to the 1st defendant.

Thotapoladeniya was owned by S. M. Tikiri Banda and S. M. Dingiri 10 Banda (1/2 share jointly), and they by deed 28235 of 1926 (D45) conveyed the same to Abeyratne Banda who joined in deed 4350 of 1939 already marked D42. The other 1/2 share was owned by Punchi Nilame and Kiri Banda, both of whom joined in deed 4212 of 1939 already marked D43.

Ganimehena was owned by S. M. Punchimenika, who conveyed it on deed 378 of 1857 (D46) to Dingirimahatmaya and Punchimahatmaya. Dingirihahatmaya left S. M. Tikiribanda and S. M. Dingiri Banda, who conveyed on deed 28235 of 1926 already marked D45, to Punchibanda, who conveyed on deed 3251 of 1935 already marked D41, to Abeyratne Banda, who conveyed on deed 4350 of 1939 already marked D42, to the 1st defendant. Punchimahatmaya who owned the other 1/2 share died leaving Punchi Nilame and Kiri Banda, both of whom joined in deed 4212 of 1939 already marked D43, conveying the property to the 1st defendant.

Tikiri Banda and Dingiri Banda were the owners of Sidarampadeniya and Thotapoladeniya. The original owner of those two lands was S. M. Punchi Menika, who by deed D46 already produced, conveyed those lands to Dingirimahatmaya and Punchimahatmaya, from whom it devolved on Tikiri Banda and Dingiri Banda, who conveyed on D41 to Abeyratne Banda.

I have no plans for those lands, but the entirety was claimed by my agent at the survey.

(Adjourned for lunch).

Intd. N. S., D. J., 17.3.52. 30

Trial resumed

MRS. R. M. PHYLLIS PERERA, recalled, sworn, FURTHER XD:— (Shown plan X). In plan (X) there is on the western corner a block against which is written title plan No. 312359. To D17 the title plan for that block is not attached. I did not get a document from the Crown for that block. I am in possession of that block. The extent of that block is 2 acres and 2 perches as given in P71. Except for the land shown in P71 and the land depicted in plan D32, for the rest I have

Crown title. In schedule A to the plaint there are 18 lands. Land A18 is Taradenitenna. The other lands AI to AI7 I claim in the manner I have already stated. In respect of land A18, the plaintiff claimed 1/2 on P48 of 1867 and said that the other 1/2 came to me and my mother through P49. I claim land A18 through D18 and D19. P48 and P49 recite as the source of title deed 16343 of 2.1.1856, which I produce marked D47 and deed of revocation 24540 of 24.7.1877 (D48), both executed by Golahela Lokukumarihamy. P47 and P48 do not mention Taradenitenna, i.e. land A18. I produced the decree D40 in D.C. 10 Kegalla case 9555. I also produce the plaint dated 17.6.30 and the answer of 26.8.30 (D49). The title recited in D49 is D33 to D38 which I have already produced.

For the purpose of showing my claim with reference to the plaintiff's claim, I have got the land depicted in plan X and plan Z superimposed on plan P17 produced by the plaintiff. I produce that superimposition (D50) dated 28.1.52 made by A. M. Perera, Surveyor. I got this superimposition done. (Mr. Weerasooria states that he will be calling the surveyor, Perera, to prove the superimposition).

The lots marked in pink in D50 are the lots shown in plan 329 20 marked P124. All the lots shown in D50 are shown in P17. D50 is in fact a copy of plan P17, showing in pink the lots shown in P124 and in blue the lots shown in plans X and Z. The portion in blue to the south is what is shown in plan X and the portion in blue to the north is what is shown in plan Z. Taradenitenna, which is shown in plan Y, is not shown in D50. The lots shown in pink are outside the lots shown in blue, that is, P124 does not cover any of the portions of my claim.

> In the deed of exchange P16—deed 2371—plan P124 is referred to. I first came to know the land I claim in 1928, the year that my father

bought the land. I went to the land about two months after my father 30 bought it. At that time I was studying for my Degree, attending St. Bridget's Convent, and later the Ceylon University College. I got my Degree in 1932—Honours in English. After that I got my M. A. in Psychology as an internal student in London. I was a lecturer in English at the Ceylon University from 1933 to 1939.

My father was living in Colombo. Wereke Unnanse was placed on the land by my father to look after it. There was also Mr. D. G. Fernando, Notary, who practised in Kegalla. He was a friend of the family and he also looked after the land. The money was sent to Notary Fernando and he used to dole it out to Wereke Unnanse. Fernando used to visit

40 the land frequently and report to my father. Notary Fernando is dead and Wereke Unnanse is also dead. Wereke Unnanse corresponded with my father in connection with the lands and he also contacted D. G. Fernando. D. G. Fernando used to visit Kalutara often, and on his way he used to meet my father often in Colombo. At the very beginning I used to attend to my father's correspondence, but later on I used to assist him in the management of the land. In November, 1929 the land was given in charge to a man called Juanis and he is still there.

No. 2.4 Defendant's Evidence Mrs.R.M.Phyllis Perera Examination -Continued.

No. 24 Defendant's Evidence Mrs.R.M.Phyllis Perera Examination —Continued.

I have visited Taradenitenna—land A18. I first visited it about two months after my father bought the land. When I first went to the land A18, there was a little bit of tea, a little bit of cleared land and a little bit of chena. There was a patch of tea close to the entrance. My father barbed-wired land A18 and got it cleared and got the vacancies filled, and he got the rest of the land planted. My father got the whole of land A18 planted. By the time Juanis went in, land A18 was planted. When it came into bearing my father took the produce during his lifetime, and after his death my mother and I have been taking and are still taking the produce. My father died in 1942.

In regard to lands AI to AI7 in schedule A, I claim them on the Crown grants and decree D40 produced already, and by possession. 10

The lands shown in plan X fall within our blocks, although the plaintiff calls them by different names.

I first came to know the lands AI to AI7 about the end of 1928. My mother applied on 26.1.29 for a settlement of those lands and the Crown gave her the settlement DI7 in respect of all the blocks in plan (X) except the two blocks I have mentioned. PI17 is the application made by my mother, in which she has stated—" Length of possession of applicant: Over one year." My mother herself did not attend to these matters. It was my father who attended to them. On that application Mr. Ratwatte made his inspection, and his report is DI4. The plantations were made by my father and after that my father continued to maintain the land. (Shown DI4). At the time I went to the land, towards the end of the year, some portions were cleared and some were planted. My father continued to plant and ultimately the whole extent was planted by my father. After the planting was done, he maintained it. When the tea came into bearing my father got it plucked. Thereafter I took the produce up to date.

My father entered into possession of the lands bought from Abeyratne Banda in 1939 much earlier, probably at about the same time as he planted the other lands. There was chena cultivation on those lands in 1934. I went to see the crop of Amu in 1934. All the lands in plan Z are planted in tea. The land was cleared in about 1939 for tea. About 2/3rds were cleared in 1939 by my father and 1/3rd was cleared by me after my father's death in 1942. I cleared 1/3rd in 1945 or 1946. Thereafter I took the produce after my father's death. In 1938 my father made an application to obtain a permit for planting and he was given a permit. Thereafter the planting commenced. Juanis was in charge of all the blocks of land.

I was in Court when Mr. Peries gave evidence. It is not correct to say, as stated by witness Peries for the **plaintiff**, that possession was taken of the lands on our behalf for the first time in 1946. Peries or anyone else did not have any possession of the lands from the time I came to know the lands in 1928.

I got married in 19.12. My husband is a doctor. He was stationed in Kegalla from 1943 to about 1945. We were living in Kegalla Town. Evidence Mrs.R.M. Phyllis The lands in dispute are about 8 or 10 miles from Kegalla, and we visited these lands often before we were stationed in Kegalla, while we were in Kegalla and after we left.

The Tea Control was in force from 1933 or 1934. In connection with the Tea Control my mother made an application for registration.

> Intd. N. S., D. J., 17.3.52.

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Further hearing on 14th, 15th and 16th July, 1952.

Intd. N. S., D. 1.

No. 25

ORDER OF THE SUPREME COURT DISMISSING PLAINTIFF'S APPEAL

S.C. No. 97

D.C. (Inty) Kegalle 6269

Present : GRATIAEN J AND PULLE J.

Argued & Decided on : 11th July 1952.

- 20 CYRIL E. S. PERERA with M. A. M. HUSSAIN for the plaintiffappellant.
 - N. E. WEERASOORIYA, g.c. with C. R. GUNARATNE for the defendants-Respondents.

GRATIAEN J.---

We are unable to say that the learned District Judge exercised his discretion wrongly in refusing an application for a commission to examine and record the evidence of the witness Rodale and the appeal is therefore dismissed with costs.

> Sgd. E. F. N. GRATIAEN, Puisne Justice.

> Sgd. M. F. S. PULLE, Puisne Justice.

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No. 25 Order of the Supreme Court dismissing Plaintiff's Appeal 11.7.52

No. 24 Defendant's

Perera

Examination

-Continued.

122

No. 26

No. 26 Decree of the Supreme Court dismissing Plaintiff's Appeal 11.7.52

DECREE OF THE SUPREME COURT DISMISSING PLAINTIFF'S APPEAL

ELIZABETH THE SECOND QUEEN OF CEYLON.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

D.C. Inty 97/1952

MRS. CHARLOTTE MARY CLARE FERNANDO of Credon, 18 Castle 10 Street, Colombo and another. Defendants-Respondents.

Action No. 6269

District Court of Kegalle.

This cause coming on for hearing and determination on the 11th July 1952 and on this day upon an appeal preferred by the plaintiffappellant before the Hon. Mr. E. F. N. Gratiaen, Q.C., Puisne Justice and the Hon. Mr. M. F. S. Pulle, Q.C., Puisne Justice of this Court in the presence of Counsel for the appellant and the respondents.

It is considered and adjudged that this appeal be and the same is hereby dismissed with costs.

Witness the Hon. Sir Alan Edward Percival Rose, Q.C., Chief Justice 20 at Colombo the 15th day of July in the year one thousand nine hundred and fifty two and of Our Reign the First.

Sgd. W. G. WOUTERSZ,

Dy. Registrar, S.C.

No. 27 Defendants' Evidence

No. 27

14.7.52.

DEFENDANTS' EVIDENCE

Appearances for defendants as before.

Mr. Goonewardane, Proctor for plaintiff, states that his Counsel, Mr. Advocate Cyril E. S. Perera, is not present today in Court to proceed with the case. There has been an understanding between learned 30 Counsel for both sides, when the Interlocutory appeal was mentioned on 11.7.52 in the Supreme Court, that if the Interlocutory appeal in this case was to be argued on that date, Mr. Perera would not be able to proceed with the trial here as he would not have sufficient time to get ready in the trial. He moves that the case be postponed.

Mr. Advocate Weerasooria, o.c. does not oppose the application of the plaintiff, and states that there was such an understanding between him and Mr. Perera on 11.7.52. He does not move for costs.

In view of the position appearing from what has been stated above, I allow the application of the plaintiff. I refix further hearing for 18th, 10th and 20th August, 1952.

Intd. N. S., D. I.

18.8.52.

1.4th July, 1952. 10 JS.

Appearances as before.

MRS. R. M. PHYLLIS PERERA, recalled, sworn, FURTHER XD :--

Although I have stated in my evidence at page 04 that I claim 28 acres 3 roods and 35 perches of the land depicted in plan X on D17, I state that the total extent of the lands given on D17 and depicted in plans D17a to D17d is 29 acres and 5 perches. My father kept books of account in Colombo. Those books referred to the land which I now claim. Those books show the expenses incurred in opening up and 20 planting the land. (Shown D51). This is the book of accounts from January, 1928 to May, 1940. (Objected to). D51 was kept by D. C. Gunawardene. He is dead now. The later pages were kept by my father himself, who is also dead. Since 1928 I have examined the books of account myself. Latterly, I checked the accounts from about 1933 onwards. From 1928 I attended to the correspondence. These books were in my father's office, and after his death I kept the books. They were kept in the ordinary course of business by my father in regard to

the estate. (Order—I allow D51 in view of the witnesses' evidence

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on D51).

The accounts entered in D51 (pay-list) was sent by Wereke Unnanse to my father through the notary, D. G. Fernando. The pay-list contained details of the payments made and also any other expenses incurred by Mr. D. G. Fernando on account of the estate. Any estate requisites sent by my father from Colombo were also entered in D51. At page I of D51-dated January, 1928-there is the Purchase Account of Uduwewela Estate. Page 11 of January, 1928 contains certain items including weeding Taredeniya, and Aradana Ela. Page 15 of March, 1928 refers to Dharmaratana's salary. Dharmaratana is the same person as Wereke Unnanse. Page 17 dated April, 1928 refers to clearing Dangolle and Yonpalliya. Yonpalliya is included in the Crown Title, and Dangolla 40 is not within the area in dispute. It also refers to Taradenitenna and Miyanapalawa or Aradana Ela. I point to page 39 dated March, 1929 where both names Miyanapalawa and Aradana Ela are given. Miyanapalawa is given as $2\frac{1}{2}$ acres. At page 17 of D51 reference is made to the 29 acre block plus 11 acres. The 29 acre block is the Crown title portion

Mrs. R. M. Phyllis Petera Examination

No. 27 Defendants' Evidence ---- Continued

No. 27 Defendants' Evidence Mrs. R. M. Phyllis Perera Examination -Continued

and the 11 acres is to the south of the Crown title. Page 19 of May, 1928 refers to Taradeniya new block cleanweeded, Taradeniya 14 acres and Miyanapalawa 21 acres. Page 23 of July, 1928 refers to cutting trees of the 34 acre block. That block includes the 29 acre block, the seedbearing block and some adjoining land. D. G. Fernando is dead. He wrote to my father. I used to read his letters. I am familiar with his hand-writing. (Shown letter dated 7.7.1928 D52). This is in the handwriting of D. G. Fernando. (Objected to. I allow the document). In the accounts D51, in July, 1928, at page 23, reference is made to the 34 acre block, the 29 acre block, the 11 acre block and Taradenitenna. (Shown plan X). In the plan X the Tea-seed bearer block is the block marked T.P. 312359 on the south-western part of the land. It is still a Tea-seed bearing block. I also refer to page 29 dated October, 1928 in D51, where reference is made to the 34 acres and also it is divided into $4\frac{1}{2}$,7 and $1\frac{1}{2}$ for the purpose of accounting, and reference is also made to Aradana Ela. I point to pages 31 and 33. I produce the plan No. 1443 of July 17th for Taradenitenna made by Mr. Marcus, Licensed Surveyor, who is dead,—marked D53. The year of the plan is torn off. This plan must have been made about 1928, to my knowledge—some time after the land was bought. It shows the old tea and the new 20 clearing. The land is divided into 3 blocks. Page 33 of December, 1928 of D51 also refers to three blocks of Taradenitenna, namely 8 acres, 21 acres and 6 acres. The pages to which I have referred show the extents which were planted and weeded at that time. The reference to tea-pits also appears in D51. Page 19 of May, 1928 of D51 shows 22,988 tea-pits. Page 21 shows 94,625 tea-pits. Page 23 shows 28,590 and 26,262 tea-pits. Page 65 refers to 4022 tea-pits and page 67 refers to 16,105 tea-pits. The total comes to 192,563 tea-pits. About 3,500 tea plants are planted in an acre. Tea-pits have been dug in an extent of 30 55 acres.

Uduwewela Estate consists of Taradenitenna in extent 18 acres. the lands depicted in schedule A claimed by plaintiff, other than Taradenitenna, and a land adjoining on the south of it in extent about 45 or 46 acres. There is another block some distance away about 7 acres in extent, and the new clearing in extent about 13 acres, totalling about 84 acres. When my father bought a small block of Taradenitenna, about 8 or 10 acres had been planted at that time. The new clearing I referred to earlier in extent 13 acres was opened up for chena cultivation about 1928 or 1929, but it was put in tea about 1938. The 8 acres of Taradenitenna which was planted, and the 13 acres, does not come into the computation for tea-holes that were dug, because they were already planted.

The new clearing is the land shown in plan Z. That land was opened up for chena cultivation during my father's lifetime. It was first chenaed about 1928/29. A portion of it was opened up for tea by my father. Juanis did the actual work. He succeeded Wereke Unnanse, at the end of 1929. He is still on the land as Superintendent. He

corresponded with my father, and after my father's death with me in regard to this land. I have letters which he has written to my father. (Shown letter dated 9.8.31 D54). It is a letter from Juanis. In D54 Juanis states that the reaping of green-gram is not yet done on the land. He refers to the land claimed by plaintiff in schedule B of the plaint on which the green-gram had been sown at that time. He refers to the tea plucked from the new division as 688 pounds. The tea that was planted in 1928 was gradually coming into bearing. (Shown letter dated 16.9.31 D55). In D55 Juanis states that up to date 4 sacks of kurakkan had 10 been reaped. That reaping had been done also from the same block— schedule B. (Shown letter dated 25.10.31 D56). Juanis refers to the plucking of tea-leaf from the new portion-481 pounds. That is the portion that was planted in 1928. He refers to the weeding of the teaseed bearer block given on contract. The kurrakkan he refers to in that letter is also from the same block.

Wereke Unnanse wrote letters to my father. He is dead. I am familiar with his handwriting. (Shown D57 letter dated 25.3.28). It is in his handwriting. The address from which D57 has been written is Taradenitenna. Wereke used to live on the land and also in a place about 100 yards away. D57 refers to 37 acres, splitting it up to 11 acres, 20 23 out of 29 acres and 3 acres out of 8 acres. The 23 acres out of 29 is the Crown grant block. The 3 acres out of 8 is the 7 acre block I referred to earlier. The II acre block is a block to the south of the Crown grant block. (Shown D58 of 19.4.28). It is in the handriting of Wereke Unnanse. It refers to clearing 4 acres of Taradenitenna-draining the old block of Taradenitenna—the 29 acre block and the 11 acre block, and gives an account of the expenditure.

My mother and I did not get into forcible possession of some properties belonging to Mrs. Peries. My father, and after his death, myself 30 were in possession of this property. Plaintiff has no property adjoining our land at all. My father died in April, 1942. At the time these lands were planted, nobody made a claim saying that these lands were not my father's. At that time the owner of the lands that had been planted was my mother, and my father got the work done on her behalf. Later I got certain plantations made after the gift of 1/2 in my favour, and the balance belonged to my mother. Until this action was filed there was nothing to show that I was not the owner of the property.

There was a dispute in respect of Aradana Elahena. A man lived on a portion of that land and claimed it as his own. My father filed a 40 case against him in the D.C. Kegalla and got decree against him (D40). There was no other dispute about the title of this land.

I produce marked (D59) the death certificate, which shows that Karl H. Jansz died on the 4th July, 1936. He made plan D15.

When the Tea Control came into operation, coupons were issued for the portions in dispute—part of my estate. I got tea coupons till the end of the Control. I produce a certified copy by the Tea Controller of a

No. 27 Defendants' Evidence Mrs. R. M. Phyllis Perera Examination -- Continued.

No. 27 Defendants' Evidence Mrs. R. M. Phyllis Perera Examination —Continued.

Mrs. R. M. Phyllis Perera Cross-Examination

tracing of plan 1340, furnished by Mr. Hermon who gave evidence—D60. Mr. Hermon refers to this plan in his report. This plan was sent along with his report. In the event of my not being declared entitled to any portion of this property, I am claiming compensation.

XXD:—My parents and I resided in Colombo up to the time of my marriage in 1942. My parents have always resided in Colombo. I have a brother younger to me. He is one year younger than I. He was sickly as a boy and later he was a Medical student. He is now a doctor. My father did not want him to attend to these matters as he had to attend to his studies. He was in the Medical College from about 1927. He passed out in 1935 or 1936. I was in the University from 1930 to 1932. Up to 1930 I was at St. Bridget's Convent.

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My brother hated walking for one thing, and my father did not want to take any time off him as he had failed once. I used to come to Kegalla to see these lands about 1928 or 1929-about once in 2 or 3 months, always accompanied by my father. My mother also accompanied me occasionally. My mother also knows about this property. She also dislikes walking. She used to come to the property but stays in some other house without walking about the property. We take the car right up to Taradenitenna. From there we got to walk about 5 minutes to the block claimed by plaintiff in schedule A. I have been attending to more work than my mother regarding this estate. I claim one half of the lands depicted in plan X, and the land in plan Y-that is land A18. I do not claim one half of the lands in plan Z. I do not claim any of the lands in plan Z. My mother is the owner of the land in plan X. I have given all the instructions in this case. I have looked for the documents and gone to the Land Registry and looked for the deeds with the assistance of my lawyers. I understand the case well. My mother did not give instructions to the lawyers in this action.

I have amended the answer once on 21st November, 1950 and again 30 on 14th August, 1951. On 14.8.51 I have pleaded a large number of additional paragraphs and a number of deeds. Plan X shows lands AI to AI7. It also depicts another block, which is a tea-seed bearer block which also I claim, viz: T.P. 312359. I have no deed for that block but we have always been in possession of that block. I stated so in my earlier evidence. What the plaintiff claims as lots AI to AI7 in schedule A is also depicted in plan X. I claim these lots on a Crown grant and by a decree in my father's favour in D.C. Kegalla case D40. The block I claim on D40 is on the east in plan X, between the boundaries marked as Village boundary on the north and the road-reservation on the 40 south; and on the east and west by live-fences. I do not claim this block on the Crown title. I cannot say under what Ordinance the Crown gave that title to me. On the application of my father the Crown settled the land on my mother by Crown Grant. In the amended answer filed on 14.8.51 I have set out an alternative title beginning from paragraph 27 on certain deeds, to the lands claimed by the plaintiff. In paragraph 27 I plead deed No. 367 of 15.8.20. I have not produced the deed referred

to in paragraphs 27, 28 and 29 of the answer dated 14.8.51, except deed No. 1065, which is marked D29/P116. I did not produce them because they had already been produced by the plaintiff I have the Crown grant and that is why I did not produce those deeds.

D29/P116 is referred to in P117, which is the application by my mother for a settlement or investigation of her claim. That is the deed on which she says that she owns these lands. In application P117 there is no other title set out. There is no other deed except D29 for the lands AI to AI7. I have read D29. D29 conveys to my mother Uduwewela 10 estate of 85 acres 2 roods and 11¹/₂ perches according to plan No. 1340 of 22.7.27 (P148). The estate is described as about 100 acres. The entirety of the 100 acres is described in that deed as being situated in Uduwewela Village. Uduwewela estate referred to in D20 is not the land which I claim as lands AI to AI7. I claim Uduwewela Estate on D29 and also the deed of rectification D30/P119. Lands AI to A17 are the lands described in D29. I say that lands AI to A17 are not part of land (1) only in deed D29, but are included in the other lands described in that deed. In D20 the second land is Pillemulahena of two amunams paddy said to be at Dodantale. I do not know the exact location of the lands as described in D29 but I know them by their names as they were worked on the estate. Land No. 2 in D20 is, as far as I am aware, part of land A18. The 7th land in D29 is Taradenitenna-A18. Land No. 7 makes reference to a plan No. 1342 of 22.7.27. That plan has been produced marked D7.

(Adjourned for lunch).

Trial resumed

MRS. R. M. PHYLLIS PERERA, recalled, sworn,

FURTHER XXD :--- I cannot say whether in page 1 of D51 the reference to Uduwewela Estate Purchase Account against date 18.1.28 is to D29. **30** I cannot say whether the item on that page reading—Amount paid by cheque Rs. 5,000/- refers to that portion of the consideration paid in the presence of the notary on D20. D20 is dated 18.1.28. I cannot say whether there is any other deed dated 18.1.28 among my father's papers. I cannot say anything about the entries appearing on page 1 of D51. As far as I am aware, D. G. Fernando arranged for the purchase of this land. He is a notary at Kegalla and he is referred to at page I in D51. I cannot say where land No. 2 in D29 is situated. According to the boundaries land No. 2 would seem to be a land adjacent to land No. 7 in the same deed. Except lands 2 and 7, all the other lands are in Uduwewela Village. In D29 land No. 1 is described as 100 acres in 40 extent. In D20 all the other lands are described as part of Uduwewela Estate. A. R. Senenayake is the vendor on D29. He refers to his title as deed 380 of 21.6.27. I did not produce deed 380 because plaintiff has produced it as P115. The title on D29 traced back according to the answer, would go back to deed 367 of 15.8.20. (Paragraph 27 of the amended answer of 14.8.51 read out). According to that, T. B. Boyagoda

No. 27 Defendants' Evidence Mrs. R. M. Phyllis Perera Cross-Examination -Continued.

No. 27 Defendants' Evidence Mrs. R. M. Phyllis Perera Cross-Examination --Continued.

was the original owner of lands A1 to A17 and transferred the same by deed No. 367 (P108) to Caruppen Chettiar. Thereafter certain other transactions are recited till A. R. Senanayake became the owner. P108 deals with 39 lands. The first 26 lands are described as now forming one property called and known as Uduwewela Estate. (Boundaries in P108 of lands 1 to 25 read out). Lands 1 to 26 in P108 form Uduwewela Estate within boundaries as described therein. Those boundaries are identical with the boundaries in D29. (Shown P178 being a lease of lands I to 26 appearing in PI08). All the 26 lands are in Uduwewela Village. All the lands which comprise Uduwewela Estate are undivided 10 shares of 26 lands. Some of the names of the lands 1 to 26 in P108 are also in lands AI to AI7. As far as I can see their descriptions do not tally. I am unable to say whether lands 1 to 26 in P108 are the same or different from lands AI to AI7, but I know the lands we possessed. In P108 the first land is an undivided 1/8th share of Dangollehena situated at Uduwewela, while land A6 is a Dangollehena of two palas situated at Polwatta. They are different though the names are the same. In P108 land 17 is an undivided 13/40 of Ethinimalehena situated at Uduwewela in extent 6 palas, while AII is an undivided 1/2 of Ethinimalehena of 12 lahas situated at Polwatta. Those two lands are different. Land 20 A9 is 1/4th share of Bakmiangehena and purana of one amunam, but the 11th land in P108 is a Bakmiangehena of 2 acres 0 roods 2 perches. In both descriptions, the lands are situated at Polwatta. All the 26 lands in P108 except land 11 are described as situated at Uduwewela. Plan P71 does not represent land No. 11 in P108. The title plan P71 is shown in plan X. Lands AI to AI3 are in Polwatta Village. It is a Village to the north of Uduwewela Village. Land A14 is Aradhana Elehena situated at Dodantale. That is the land which I claim on the D.C. decree D40. Although in the schedule, lands A1 to A13 are described as in Polwatta, some of them fall outside Polwatta, when located. Lands 30 A7 and A8 are in Uduwewela Village and not in Polwatta. I am aware that Mr. Peries identified land A8 as lot 104 in plan P151. A8 is in Polwatta and A17 is in Uduwewela.

All the 26 lands forming Uduwewela Estate, except one land, fall within Uduwewela Village according to the deeds P108, P115, P116, P118 and P119. (Mr. Perera states that the one land is the land depicted in plan P71). There is a plan P148 referred to in P116. Looking at P148, the greater portion of the lands depicted therein is in Polwatta Village, but D29 in my mother's favour does not describe any of the lands dealt with on it as in Polwatta. It would be correct to say that the lands dealt with on D29 are not the lands depicted in P148.

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Q. I put it to you that the lands dealt with on D29 are not the lands depicted in P148.

A. I always thought that they were the same lands in spite of the disagreement of the name of the Village, Comparing the deed and the plan, it would appear that the lands in D29 are not the lands shown in plan P148.

Q. Was it because there was this discrepancy that your vendor gave the deed of rectification D₃₀?

A. I cannot say.

No. 27 Defendants' Evidence Mrs. R. M. Phyllis Perera Cross-Examination —Continued.

I cannot say why D30 was executed. I was aware of the existence of D30 in about 1928. (Mr. Weerasuriya challenges the translation of P119 while Mr. Perera challenges the translation of D30, which is the same as P119). (D30 is handed over to the witness).

Q. D30 states—the boundaries in a plan were mentioned by inadvertence?

Q. The deed of rectification says that the boundaries should not be as appearing in deed 1065 but as given in the deed of rectification?

A. Yes.

It is stated in D30 that the schedule in D29 should be deleted and the schedule as given in D30 be put in its place. The schedule given in D30 refers to 26 lands in Uduwewela Village and the boundaries given in D30 are identical with the boundaries given in P108. I admit that the title that passed to my mother on D29 and D30 is to the lands I to 26 in P108. I do not know the boundary-line between Uduwewela and Polwatta Villages.

I did not take part in preparing application P117. On page 2 of P117 there is a sketch, which is the same as P148. In P117 the applicant recites title only on D29. I cannot say why deed D30 was not referred to in P117. D30 mentions 26 lands in Uduwewela Village, and not one of them is mentioned as in any other village. In P117 the lands applied for are mentioned as being situated in Dodantale, Uduwewela and Polwatta. The application P117 is for lands which are not in D30. I cannot explain why that was so. In P117 it is stated that the title is on D29 and earlier deeds dating back to 18 May, 1873. I have not been able to trace the title back to 1873 in respect of the 26 lands referred to in P108. Those are the identical lands referred to in D30. I have not been able to verify the truth of the statement in P117 that the possessors' title is over 56 years. P117 had been prepared by my father on behalf of my mother.

Q. Is it correct to say that the execution of deed D₃₀ was deliberately suppressed in P117?

A. I cannot say.

Q. And the plan P148 was endorsed as a sketch in P117?

A. I cannot say.

¹⁰ A. Yes.

No. 27 Defendants' Evidence Mrs. R. M. Phyllis Perera Cross-Examination --Continued.

My mother will not know anything about these matters. I am not able to explain these matters. My attention to the correspondence was to read out letters from Wereke Unnanse or to take down letters dictated to me by my father. The greater part, if not the entirety, of the lands shown in the sketch in P117 would be in Polwatta. I cannot explain how lands in Polwatta Village were claimed on title to lands in Uduwewela Village. I am in possession even now of certain blocks of lands in Uduwewela Village. Outside the blocks in dispute in this case, most of the lands I possess are on the south of plan X. I am now possessing in all 45 acres, which include the lands in dispute in this case and 39 acres in various blocks elsewhere. If I were making application P117, I would have mentioned D₃₀ as well in it. D₃₀ which was executed in February, 1928 has been registered in July, 1937. P117 is dated 25.1.29. The Government Agent would have had no means of finding out the existence of D₃₀, especially because it was not registered at that time. My father must have got D₃0 executed. I remember him talking about a deed of rectification.

Q. I put it to you that the only reason why it was not registered is because P148 could not have been mentioned in P117 if D30 was registered?

A. I cannot say.

Q. Are you satisfied that in P117 material facts were not put in?

A. Yes.

It is correct to say that the description of the lands applied for in P117 did not agree with the description of the lands in D29. I cannot say from where the facts set out in **the application** were taken. I only became interested in D30 after the filing of this case. I know of its existence earlier but did not know whether it was registered or not.

Q. Is there anything written in D51 by which you can connect the statements in D51 with the lands A1 to A17 in schedule A?

A. Yes, there are references to Polwatta chena in D51.

In page 17 of D51 there are entries about Yonpalliya block, 29 acre block, Miyanapalawa and 11 acres block. It is by these names that we called the lands A1 to A17.

Intd.	N. S.,
	D.J.,
	18.8.52.

Further hearing on 19.8.52.

Intd. N. S., D. J. 40

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18th August, 1952. J.S.

19.8.52.

No. 27 Defendants' Evidence Mrs. R. M. Phyllis Perera Cross-Examination - Continued.

MRS. R. M. PHYLLIS PERERA, recalled, sworn,

FURTHER XXD :---(Shown D29). The first land is described as the land known as Uduwewela Estate in extent 85 acres 2 roods 114 perches according to plan 1340 dated 22.7.27. This follows some description of the land and it goes on to say, " which abovementioned extent is included in the Uduwewela Estate of about 100 acres bounded on the east by Aradhana Ela-hena and Dodantale Estate, south by fields and lands 10 belonging to villagers, north by lands claimed by villagers and Ambulugala Village limit, west by fields and lands claimed by villagers, registered in C. 127/254. That description is correct. In D₃0 the schedule is given as, " all that land called Uduwewela Estate comprising of 26 allotments of land registered in C. 97/104 and the identical boundaries as in D29 are given. In place of reference to a plan in D29 there is a reference to an allotment of 26 lands in D30. My mother was in possession of almost 100 acres. The extent of 100 acres possessed by my mother was reduced as a result of two cases by which a portion of the lands were given by decree of Court to certain claimants. I cannot give the exact extent so given to the claimants. The extent given to me by deed D31/P118 20 is one half of 85 acres and odd, and my share is to be found in lands AI to AI8. I have not gone round the boundaries as set out in D₃₀, but I have gone round the whole land as I know it. When I knew the land, it was fenced round with barbed-wire, and I therefore did not seek to apply the boundaries in the deed given to me, to the property. D29 gives my mother title to Uduwewela Estate and to land A18, which is described as 18 acres odd in extent.

The tea-planting season in this area is immediately before the rains, that is in May/July. There is a season just before the May rains and 30 just before the October rains. In 1928 and 1929 the whole of the land that my mother possessed, other than the 8 acres outside schedules A and B and other than the 13 acres in schedule B, was planted. We used to have tea nurseries here and there, and when the whole land was planted those nurseries were planted a little later. The portions that were taken up by the nurseries were planted a little later. The whole land must have been planted by 1931 or so. There are various entries in D51 showing the expenses incurred in planting. There are entries for clearing the land, digging holes and for the labour involved. I made no attempt to find out that cost. This estate is a well planted estate now. My 40 father was a planter. He used to come once a month and do the planting himself. At the start Wereke Unnanse supervised the planting and then Juanis. R. P. Gorton, the superintendent of Leukke Estate, paid visits to the land from 1928. After Mr. Gorton left, Mr. Gordon took over the supervision. Both these Europeans took turns till 1944, when Leukke Estate was sold.

Appearances as before

No. 27 Defendants' Evidence Mrs. R. M. Phyllis Perera Cross-Examination — Continued.

Land A18 was planted in portion at the time when my father bought it. About half the land was planted and in bearing. A labourer can pluck from 45 to 55 lbs. a day. (Shown D56). From D56, which gives the quantity of tea plucked, I cannot give the number of labourers employed. It may be that at least 4 or at best 8 labourers may have been employed to pluck the 160 lbs. referred to in D56. On the last date of plucking referred to in D56, only 24 lbs. had been plucked. I cannot say from D56 from what area the plucking had been done. It is possible that the plucking referred to in D56 may have been from land A18. In 1931 they were beginning to pluck tea from lands A1 to 10 A17. I do not know whether any plucking was done in 1931 from lands AI to AI7. There is a reference to a new portion. The new portion refers to the lands claimed under schedule A other than A18. There was a new clearing in A18 to 1928. In 1931 that would not have been called a new portion because we gave it the name Taradenitenna, and I say that the words "new portion" in D56 would not refer to land A18 because I know that the term "Aluthkalle" (new portion) in D56 referred to the portion other than land A18.

On the 16th, according to D56, the area plucked must have been 3 or 4 acres and on the following days it must have been less. (Shown D54). 20 The pluck referred to in D54 also would not have been from more than 3 or 4 acres, if the area was in normal bearing. (Shown D57).

Q. Can you state from D57 what the extent of 37 acres referred to is?

A. Yes. 11 acres in Uduwewela, 23 acres out of 29 and 3 acres out of 8—that makes it 37 acres.

The 11 acres block is not in dispute in this case. I am in possession of those 11 acres. When it is stated that the 11 acres are in Uduwewela the inference is that the rest is not in Uduwewela. The extent of 3 acres is out of the 8 acre block not in dispute. There are entries in D51 to 30 show that the balance 6 acres were cleared. The entries in D57 about clearing 11 acres is also shown in D51. The items referred to in D57 are shown at page 15 of D51 under date March, 1928. The entry in D_{57} is shown in D_{51} at page 15. The writer of D_{57} has sent that letter to show for what purpose he had spent that sum of Rs. 353/-. The amount given in the letter D_{57} is Rs. 584/70. In D_{51} there are entries at page 11. In February, there is another entry at page 13. There is an entry at page 13 item 9 Rs. 176/70, at page 15 there is another item (5) Rs. 353/-, at page 13 there is another item Rs. 189/-. There is another entry at page 15-item 15-Rs. 28/32 for clearing V.C. road, item 10 40 Rs. 41/68 for clearing boundaries. No, there are 3 items at page 11 Rs. 65/-, at page 13 item 9 Rs. 176/70 and at page 15 item 5 Rs. 353/making in all a total of Rs. 594/70 referred to in D57, and not Rs. 584/70. I cannot account for the difference of Rs. 10/-.

133

(Shown D58). It refers to the preparation of the land for planting. I have no letter to the effect that the land is planted, because my father goes to the land and he must have seen it.

No. 27 Defendants' Evidence Mrs. R. M. Phyllis Perca Cross-Examination -Continued.

In D58 there is a reference to a 29 acre block, 8 acre block and 11 acre block. The 11 acre block and the 8 acre block are not in dispute in this case. In D52 the 29 acre block is spoken of as the 34 acre block. Even in D52, which is dated July, 1928, the only reference is to clearing the land. At the date of D52 the 4 acres in A18 would have been planted. (Mr. Weerasooria hands over to Mr. Perera letter dated 23.7.28 D61). 10 D61 says that D. G. Fernando went to the land. That is the whole land—A18 and the lands in Uduwewela Village. Today I own about 19 acres in Uduwewela. D61 does not give the name of the land planted. The priest referred to in D61 is Wereke Unnanse. I do not know whether he was the incumbent of Dodantale Vihare. I knew that he was resident at Dodantale and also sometimes on land A18. (Shown P177). It is a letter written by Ratwatte, R.M. It is dated 8.2.29 and addressed to the A.G.A. It says that a certain tea plantation is $1\frac{1}{2}$ years old. If it is 1¹/₂ years old, that tea must have been planted in about August, 1927. According to this letter it must have been planted in the May planting 20 season of 1927. It is difficult to say whether a particular plantation is one year old or $1\frac{1}{2}$ years old or even two years old. When my mother sent P117, she sent the deed D29. D29 deals with A18, which is 18 acres. The tea on A18 at that time would have been about 10 years old. In P177 there is a reference to a block of tea of 18 acres which is 10 years old. That could be a reference to A18.

Q. If P177 refers to the land shown in Plan D15, then it refers to the lands AI to AI7 in dispute?

A. Yes.

According to that letter, AI to AI7 would seem to have been planted 30 some time in 1927. My mother's purchase of those lands was in 1928. If P177 is correct, the lands must have been planted before my mother's purchase. In P117 my mother does not state anything about the lands being planted in tea.

In D51 there is an entry at page 23 under date July, 1928 item 12, reading "28,590 tea holes in 11 acre block Rs. 210/-". There is an entry in D51 at page 10 under date May, 1928 reading as follows :----"22,981 tea holes Rs. 137/80." I say that that entry refers to the 29 acre block. Then again in entry under date 1928 page 21 item 16-40 tea holes in 34 acre block Rs. 183/75." That includes the 29 acre block. The entries at pages 19 and 21 in D51 do not give the name of the lands in respect of the entries referred to. At page 23 there is a reference to the II acre block and the 34 acre block. (Shown D52). In D52 it is stated that the 11 acre block is only one of 8 acres. That is in fact so. The 28,500 tea holes I mentioned referred to that block.

No. 27 Defendants' Evidence Mrs. R. M. Phyllis Perera Cross-Examination — Continued. Juanis was resident on this land. He was not a conductor on Kempitikanda at any time. I cannot say whether D48 is **registered** or not. I do not know the extent of a pela of paddy in this area. I learned that a pela of paddy was more than an acre, but I cannot be certain.

The title deed for A18 is D29. A18 is described as a land of 6 pelas in D29. It refers to the plan D53, which is an extent of 18 acres. I do not know that 6 pelas paddy can be 18 acres. E. M. Fernando was my attorney and he had plan D53 with him when Mr. Frugtniet went to survey the land. I am aware that the statement of Mr. Frugtniet in his report P146, that one E. M. Fernando showed plan D53 to him, is not correct. I was not present but I only know of the incident by what E. M. Fernando told me. I have not put him down as a witness and I am not calling E. M. Fernando.

I was myself asked to produce these plans in Court. I am not aware whether any objections have been filed on my behalf to the discovery of plan D53. No, I admit I have filed an affidavit in this case dated 15.7.51 objecting to the discovery of plan D53 on the grounds set out therein. D53 on the face of it, shows a broken line in the middle, which divides the land into two equal blocks, each block 8 acres 3 roods 15 perches. I cannot say whether the dividsion into two equal blocks would mean that they have been so possessed. I cannot say who made that division. I cannot say whether the use of red-ink on a plan shows that there has been an alteration made in the plan. If there is evidence for the plaintiff that the division shows that the land had been possessed by the plaintiff and by the defendants in equal shares, that is not correct.

Q. Why is the land on the plan divided into two equal blocks?

A. It is for working purposes.

The book D51 shows an 8 acre block, 6 acre block and 2 acre block separately worked. The 8 acres 3 roods 15 perches and the 2 acres o roods 35 perches, totalling 11 acres o roods 10 perches is all old tea. There is a new clearing **block** of 6 acres 2 roods and 20 perches. Ordinarily, the old tea will be worked as one block and the new tea as another block. I cannot say why the old block is divided into two portions, but it is so treated in D51. That is entirely my inference and is not supported by D51.

> Intd. N. S., D. J., 19.8.52.

(Adjourned for lunch)

Trial resumed

MRS. R. M. PHYLLIS PERERA, recalled, sworn,

FURTHER XXD:—Q. I put it to you that your reluctance to produce plan D₅₃ was due to the fact that a division was shown on it ?

A. It is not so.

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I stated in my evidence that land A18 belonged to Somananda and produced deeds D18 and D19. D18 is from D. M. Loku Banda and D19 is from one H. R. H. Banda's son, Loku Bandara, in favour of Somananda. D18 is dated 1888 and D19 is dated 1898. The boundaries in D18 and D19 of land A18 are identical. D18 and D19 are for the same land. I cannot say why Somananda got two deeds for the same land. D18 recites title of the vendor by right of inheritance from his mother, Erawpola Lokukumarihamy, deceased. (Shown P48). It is a deed by which one Golahela Erawpola Lokukumarihamy transfers 1/2 share of A18 of two amunams, and on the same day by P49 transfers the other 1/2 share to one Loku Banda. The transfer on P48 was to Erawpola Medduma Kumarihamy. The transfer on P40 was to one Loku Banka.

I stated in evidence-in-chief that P48 and P49 recite as the source of their title deed 16343 of 2.1.1856. My lawyers told me that. I produced deed 16343 as D47 and the deed of revocation No. 24540 as D48. I cannot give the reason why those two deeds were produced. D47 and D48 do not refer to land A18. My title is not affected by those two deeds.

20 The boundaries in P48 are not identical with the boundaries in D18, for land A18. I have not looked for the boundaries in D18 on the ground. I have not checked whether the boundaries in D53 are correctly given in D18. Of the boundaries of A18 given in D18, I only know Leukkehena, which is given as the eastern boundary in D18. I heard from N. Juanis that Leukkehena and Leukewatta are the same. I cannot say where Udawalawwehena is, which is referred to in P48. P48 and P49 give identical boundaries. On P48 and P49 Lokukumarihamy has dealt with the entirety of her land-A18. Both in P48 and P49 Lokukumarihamy of Erawpola is referred to. Erawpola Lokukumarihamy **30** in D18 is the same person as in P48 and P49. If the said Lokukumarihamy had dealt with the entirety of the land by P48 and P49, there would be nothing left for her son to convey on D18. It may well be that it is because Somananda got nothing on D18 that he got a deed D19 for the identical block from Loku Banda. In D19 Loku Banda refers to deed 8774 of 1889. I have not produced that deed. Deed 8774 is unregistered and it is not available.

Q.—In view of the fact that in the plaintiff's title the earliest deed P48 of 1867 refers to an earlier deed of 1851, did you make any attempt to carry the title in D19, which is a deed of 1898, further back?

A.—I was advised by my lawyers that as deed No. 8774 was unregistered, it could not be obtained. Plaintiff did not possess any portion of Taradenitenna which we possessed.

When Mr. Hermon went to inspect the lands for the Tea Controller on my behalf, including A18 and A1 to A17, I told him that no records were available of any crop figures. Mr. Hermon was told that there were no crop figures available from 1928 to 1938. I produced two reports

No. 27 Defendants' Evidence Mrs. R. M. Phyllis Perera Cross-Examination -Continued.

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D12 and D14. D12 was made by Mr. Hermon. D14 was made by Mr. Ratwatte. They visited the land before they made these reports. When they visited the land my father was not present on the land nor was Mr. D. G. Fernando present. When D12 was made Juanis was on the estate, but when D14 was made he was not there, but Wereke Unnanse was there and he showed the land. When Hermon went to the land Gordon showed him the land. Neither Wereke Unnanse nor Gordon examined the deeds. They never compared the land on the ground with the land in the deeds. Hermon's report was a reassessment of the property, and a good report would have been financially valuable. It was my father who looked after these lands. Mr. Gordon was supervising the work, so my father did not go when Hermon visited the land. Although Mr. Hermon states that the records were not available. the records were in Colombo with my father. I do not know why the records were not made available to Hermon. Mr. Gordon did not have any records with him. The records of the crop-figures of 1928 to 1938 are in the book D51. It is possible that if the production of the records would be beneficial to our interests, they would have been produced.

Q.—Is it because you wanted to get an assessment without the assistance of these records that they were not produced?

A.—Yes.

Q.—Is it because, if your records were produced, your assessment would have been much less ?

A.—It is possible.

Mr. Hermon has given an assessment of 27,900 lbs. I do not know whether that amount of tea could be produced from our lands. The crop figures from month to month appear in D51. Till the end of 1928 the crop figures did not exceed 200 lbs. of tea. In February, 1928 the made tea was 235 lbs. In 1929 the made tea does not exceed 300 lbs. In 1930 the crop figure has exceeded 200 lbs. of tea.

For a good estate the assessment is 450 lbs. of made tea for an acre for a year. The crop figures for the years 1928 and 1929 in D51 are for land A18, but the figures for 1930 are for land A18 and another block of land 4 acres in extent, which we got on decree D40 of this Court. Tea takes 5 years to come into full bearing. For 1933 the figures are as follows :—

January	2745	July	4699	
February	2001	August	3366	
March	4815	September	6444	
April	3524	October	2999	40
May	2543	November	3786	
June	3562	December	4683	

These are all pounds of green-leaf. For the year 1934 the crop figures are about the same. For 1935 also the figures are about the same.

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137

IN SCHEDULE B to the plaint there are 10 lands. I did not make an attempt to identify any one of those lands on the ground by their boundaries. I did not make any attempt to find out the boundaries of the lands in schedule B to the plaint.

B2 is a land called Bulanehena. (P56, P57, P58 referred to). I have produced deed D44 of 1940. D40 is given to the 1st defendant by one Muthumenika and she pleads that she gets it from her mother Ukkumenika. Apart from what appears in the deed, I do not know anything else about the title. My first deed for Bulanehena is D44 of 1940. Plaintiff's first deed is P56 of 1881. Comparing these two deeds, the extents are not the same. The boundaries are also not the same. My deed D44 cannot apply to the same land for which plaintiff is pleading title on P56. I also produced deeds for land B1-D41, D42 and D43. Plaintiff has produced for land B1 deeds P68 of 1894, P69 of 1913, P70 of 1916 and later deeds. I have produced for B1—D41 of 1935, D42 of 1939 and D43 of 1939. The plaintiff's deeds are older than my deeds for B1. In D41 and P68 the name of the land is not the same. The extents are also different. The boundaries are also different. The deeds that I have produced cannot refer to the land BI as described by plaintiff. D4I gives a definite extent of I acre 3 roods and 12 perches. D41 refers to an earlier deed of 1926. In D42

20 3 roods and 12 perches. D41 refers to an earlier deed of 1926. In D42 the plan is mentioned as No. 2872 of 18.7.39 made by Mr. A. S. Kirthisinghe, surveyor. That plan is made for 3 lands—B1, $a\frac{1}{2}$ share of Totapoladeniya and $\frac{1}{2}$ share of Ganimehena. I have not got that plan. This plan and some other plans were handed over by me to a surveyor and the plans got lost. I set out the same title to lands B3 and B4. In deed D42 the extent of B1, B3 and B4 is given as 9 acres 1 rood and 12 perches.

With regard to B3 and B4 the plaintiff's earliest deed is P36 of 1914. My earliest deed for B3 is D45 of 1926. In P36 and D45 the extents are the same and the names are the same, and the boundaries are also the same for B3. With regard to B4 my earliest deed is D46 of 1857 against

the plaintiff's deed P36. The names of B3 and B4 are mentioned in D46 but the boundaries are not given. Deed D46, which mentions the names of the lands B3 and B4 is a transfer to Dingirimahatmaya and Punchimahatmaya. I do not know who Dingirimahatmaya and Punchimahatmaya are. The next deed I have produced in that chain of title is D45. D45 is by R. M. *alias* S. M. Tikiri Banda and—do.—Dingiri Banda, who say they are selling the land by right of inheritance from their mother Dingirimahatmaya, deceased.

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Those are all the deeds for the lands in schedule B.

Intd. N. S., D. J., 19.8.52.

Further hearing on 20.8.52.

Intd. N. S., D. J.

19th August, 1952 J.S. No. 27 Defendants' Evidence Mrs. R. M. Phyllis Perera Cross-Examination —Continued. No. 27 Defendants' Evidence Mrs. R. M. Phyllis Perera Cross-Examination --Continued.

Appearances as before except that Mr. Advocate C. R. Gunaratne appears instructed for defendants.

20.8.52.

MRS. R. M. PHYLLIS PERERA, recalled, sworn,

FURTHER XXD :—In paragraph 35 of the amended answer I have set out the title and referred to certain deeds. (Mr. Gunaratne for defendants states that the deeds of title to land B7 referred to in paragraph 35 of the amended answer have not been produced by the 2nd defendant and moves that he be allowed to produce the said deeds in ReXXn. Mr. Advocate Perera consents, subject to his Cross examining the witness on those documents).

With regard to A12 I have not produced the deeds, and also with regard to A5, A6, A9, A10 and A11. In all the letters this land is referred to as a 29 acre block, 8 acre block and 11 acre block. I did not know those blocks as appearing in the deeds, but I knew them by the names by which they were called. We called the 29 acre block "Aluth-kalle", the 11 acre block Dangollehenyaya and the 8 acre block "Akkara Attay Kalle." I did not worry to identify those blocks on the deeds. Plan 1340 is referred to in Deed D29. I have got the plan 1340. (Mr. Gunaratne hands over plan 1340 marked D62). D62 is undated and all the field-20 notes are missing. The key to the Plan is missing. This was all that was among my father's papers. I do not know what has happened to the key of the plan. We cannot find out the names or extents of anyone of these blocks without the key. A copy of D62 was attached to application P117. D60 is what the Tea Controller sent us with Mr. Hermon's report. When Mr. Hermon went for inspection to the land, my father was not on the estate. My father may have been on the estate when Mr. Hermon went there.

Q.—I put it to you that your father was there?

A.—It may be possible.

(D12 cage 2 read out). I now say that my father was present and it was Gordon who showed Mr. Hermon round the estate. (P154 read out). It states that "the proprietor gave me three plans and also a sketch of plan 1340 to show the area in tea."

Q. I put it to you that your father did not want to show Mr. Hermon the lands because they were not in his possession?

A.—It is not so.

My father allowed Gordon to show Hermon round because it was Gordon who Supervised the estate. It was not that my father did not want to show Hermon round because the land was in the possession of other people. I did not know one Ramiah, K.P. I do not know the

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man in charge of Ambulugala division of Kempitikanda. I do not know Ambulugala division. D29 refers to a plan of July, 1927, of 18 acres. I did not get plan D53 made. I cannot explain why plan D53 was made According to D63 the extent is 17 acres 2 roods and 30 perches.

No. 27 Defendants' Evidence Mrs. R. M. Phyllis Petera Cross-Examination -Continual.

Q.—I put it to you that your father got another plan for a lesser extent for the only reason--to come to an arrangement with the other co-owner?

A.—It is not so.

I knew that my father owned certain lands in this area. I knew 10 the names by which those lands were ordinarily known. I had no occasion to look at the deeds pertaining to those lands. I did not know whether those title deeds in our possession referred to those lands. I have not even now checked that up. My answers apply to the lands in schedules A and B. Individually it is impossible for me to identify any of the lands in schedules A and B. I do not know that a pela in this area is equal to an acre and 1/4th. The deed D29 for A18 gives me six pelas, Plan D53 was made shortly after my mother purchased on D29.

There are entries in D51 to show that we possessed 18 acres for land A18. At page 33 of D51 mention is made of lots 1, 2 and 3 of Tara-20 denitenna totalling in extent $16\frac{1}{4}$ acres under date December, 1928.

When I went to the land soon after the purchase by my father, I did not go right into the land, and so I cannot say what extent was planted in tea. After Taradenitenna was all planted, I have walked round it. When I went round in 1932 or so it was all planted. Till that time I did not know what part of it was planted.

The lands were transferred to me in 1936. All the deeds I have produced for schedule B were in 1939 and 1940. My mother was in possession of the lands in 1936 although the title deeds in her favour are in 1939 or 1940. No deeds for any portion of this land were in favour of 30 my father. They were all in my mother's favour. It was my father who attended to all these matters. When D. G. Fernando bought the lands for my mother on deed 1065, he gave possession of these lands also to my mother.

Q.—You say that your father had taken possession of other people's lands without any deeds in 1928?

A.—He said that deed 1065 and the deed of rectification D30 covered those lands.

We own lands to the south of the land in plan X. We had deeds for all the lands we possessed.

40 Q.—Certainly you had no deed for the lands in schedule B? A.—Deed D30 covers the lands in schedule B also.

No. 27 Defendants' Evidence Mrs. R. M. Phyllis Perera Cross-Examination — Continued. Q.—Then you cannot explain why your mother purchased on the series of deeds in 1939 and 1940, when D30 was already there?

A.—When my mother was in possession, there were several claimants and my mother preferred to take deeds from them than to litigate.

The deeds were obtained in my mother's name by my father.

After the coupon system started, although an extent of 84 acres was registered, coupons were only issued for about 80 odd acres. That is my recollection. I remember having seen some letters written by my father on this matter, protesting against the issue of coupons for only 80 odd acres when 84 acres were registered. (Shown PIOI). According to PIOI 10 the registered acreage is $84\frac{1}{2}$ acres and my father must have applied for coupons for that acreage.

Q.—Do you suggest that he applied for coupons for more land than he was in possession of ?

A.—He applied for the land he was in possession of.

Q.—Do you say that on that date he was in possession of $84\frac{1}{2}$ acres tea land ?

A.—Yes.

He so stated to the Tea Control authorities, that he was in possession of $84\frac{1}{2}$ acres, and got coupons on his application. I say that my father 20 got coupons for only 80 odd acres for 1933 and 1934. I say so because I have a letter, but I have not produced it so far. I now say that that letter has been produced marked/D9. After Mr. Hermon's visit, the acreage registered for coupons was reduced according to P102.

Q.—Do you stand by your answer that your father applied for $84\frac{1}{2}$ acres and got coupons for 80 acres?

A.—Yes, I do.

I appeared to have known it before. (Shown D9). According to D9 my father seems to have applied for $86\frac{3}{4}$ acres. I knew there was a reduction, but I did not know the exact figures. After D9, I cannot say for how many acres my father got registration, but I remember the number of coupons issued to him. My father must have been possessing $86\frac{3}{4}$ acres when he applied for registration. We are possessing that acreage.

I got a permit for planting tea on lands in schedule B in 1938. A copy of that permit is not available as the original files have been destroyed by the Department. When plaintiff wrote asking us not to plant the lands in schedule B, a major portion of the lands was planted. (Shown P88).

Q.—Can you produce any reply to P88 in which you have stated that the lands have already been opened up?

A.—There is no such letter.

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Q.—Do you know where or how the applicant got 55 acres mentioned in P117?

Mrs. R. M. A.—My father always thought that there were 55 acres. Probably Phyllis Perera they were guided by plan 1340 (D62).

We did not possess the entireties of all the blocks shown in D62. The figure (55 acres) represents the portions we possessed. I do not know exactly how much the extent of the lands in D62 total up to.

Q.—Do you know that D29 gives the extent as 85 acres 2 roods 111 perches?

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A.—Yes.

Though the deed D29 deals with 85 acres 2 roods $11\frac{1}{2}$ perches of Uduwewela Estate, yet application P117 refers to only 55 acres. My father had only 55 acres in the block shown in D62 and the balance was to be found in the lands in schedule B. When application P117 was made we were in possession of lands in schedule B. In all we were in possession of 100 acres.

Q.—If your father was in possession of the lands in schedule B also, why did he not apply for them also in PII7?

A.—I do not know.

20 Q.—I put it to you that he never thought he had title to the lands in schedule B?

A.—He thought he had.

Q.—I put it to you that though you got the deed D29, you were in possession of only 55 acres ?

A.—I thought the questions put to me were in respect of lands shown in D62 and that is why I said that we only possessed an extent of 55 acres. The villagers possessed the balance of the lands shown in D62.

D60 shows the tea areas of the lands depicted in D62.

An extent of 55 acres has been shown in P117 because my father only 30 possessed 55 acres out of the lands shown in D62.

One letter refers to an extent of 34 acres, inclusive of a 29 acre block, a tea-seed bearer block which is $2\frac{1}{2}$ acres roughly, and another block. The other letters produced by me refer to a 29 acre block, 11 acre block and 8 acre block, making a total of 48 acres. (Shown D51). At page 21 of D51 there is an entry under date August, 1928 reading—" Planting tea plants Rs. 35/60." On page 29, October, 1928, there is an entry reading " planting tea plants 16/59."

Q.—Is there any such item up to the date given above or even after that date about the planting of tea plants, for 1928 or 1929?

A.—There is no similar entry.

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No. 27 Defendants' Evidence Mrs. R. M. Phyllis Perera Cross-Examination — Continued,

No. 27 Defendants' Evidence Mrs. R. M. Phyllis Perera Cross-Examination -Continued.

Other than the items about making holes for tea planting stated in my evidence, earlier, there are no further entries of a similar nature in D51.

Q.—Is there any entry in D51 to show that you possessed 55 acres, apart from Taradenitenna (land A18)?

A.—No, there is only reference to extents amounting to $47\frac{1}{2}$ acres.

(Adjourned for lunch).

Intd. N. S., D. J., 20.8.52.

Trial resumed

MRS. R. M. PHYLLIS PERERA, recalled, sworn,

FURTHER XXD :- Page II of D51 refers to Pathahamula Kalle. It is included in the 34 acres. I cannot say what the extent of that block is. Aradhana Ela is not included in the 34 acres. I do not know its extent. In January, 1928 we were plucking matrice tea leaves from land A18. At that time there were about 4 or 5 acres of old tea in A18. That old tea would have given 350 to 400 lbs. per acre per year if it was in full bearing. I have heard it said that it was neglected. The tea sales in 1928 shown in D51 would be from A18. At page 17 there is a reference to Miyanapalawa. It is the same as Aradhana Ela. Yon palliya block is also in the 34 acre block. I do not know its extent. The 7 acre block that is not in dispute in this case is Koswatta or Koskalle. That was planted much later than 1928 or 1929. There was no amu plantation on it. I went to that block in about 1938 or 1939. It does not adjoin Uduwewela Estate. I did not look out for any reference to that block in D51. There is a block to the south of the land in dispute in plan X. It is about 12 acres in extent. It is called Dangollehenyaya. I think it was planted in 1928. In addition to the 12 acre block to the south of the lands in plan X, the 11 acre block is Dangollehenyaya. The 8 acre block is Koswatta. A portion of it must have been planted in 1928. 30 D57 refers to a 11 acre block, 29 acre block and 8 acre block. The 11 acre block, is to the south of the lands in dispute in plan X. The 8 acre block is Koskalle.

There are about 3,500 tea plants to an acre on this estate. (Page 23 of D51 referred to). There is an entry showing 28,000 odd holes in the II acre block, at the rate of 3,500 holes per acre roughly. There is an entry of 26,262 holes, which would work out to an extent of about $7\frac{1}{2}$ acres. At page 19 there is an entry of 22,981 holes. That will be about $6\frac{1}{2}$ acres. There is an entry at page 21—94,625 holes. That would be about 28 acres. The figures 28, $7\frac{1}{2}$ and $6\frac{1}{2}$ acres would show roughly the acreage that was planted at that time. In D51 there is nothing to show that any planting has been done in 1929 season. Any planting that is referred to in D51 is what has been planted in 1928.

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D30 was in February, 1928. It is possible to have planted the extent of land bought on D29 during 1928, as D51 shows. I admit that D51 refers to the planting of 471 acres in 1928, whereas in D9 my father has claimed 863 acres. D51 is the only book I have in respect of the planting Cross-Examinadone by my father.

No. 27 Defendants' Evidence Mrs. R. M. Phyllis Perera tion -Continued.

I stated that according to D57, for clearing jungle, etc., I presumed that the 26 acres out of the 37 acres were outside Uduwewela listate. I now know that the 26 acres is in Polwatta. A part of the 29 acre block, which I am claiming on the Crown grant and referred to in D57, is in 10 Polwatta. The 11 acre block referred to in D57 is Dangollehena. I do not know where the 8 acres referred to in D57 is. I know that block but I do not know in what village it is. An extent of about 8 acres known as Dangollehena was excluded in the partition case.

Q.—At the time the application P117 was made, I put it to you that some important facts were deliberately suppressed ?

A.—No.

Q.—And for the purpose of making P117, D30 was not registered? A.—No.

D30 refers to 26 allotments of land at Uduwewela, but P117 claims **20** lands in Polwatta Village.

Q.—Is there any reference in D₃₀ to the Village Polwatta?

A.—No. But there is mention of the Ambulugala Village limit which includes Polwatta.

(Deed D₃₀ read out). I now say that all the 26 acres are stated therein to be as situated in Uduwewela.

Q.—I put it to you that plan 1340 (D62) was specially endorsed on the application to avoid reference to D₃0?

A.—No.

Q.—Was it done to create an impression in the Government Agent **30** that only D₂₉ was in existence ?

A.—No.

My mother signed anything that my father asked her to sign, but she did not know details of anything. I was more conversant with details than my mother was. My father kept me informed of the various steps he was taking in these matters. He did not inform my mother or my brother about it.

REXXD :---My mother is about 70 years old. My brother has a deformity in his leg which prevents him from walking comfortably. He is a Government Dental Surgeon in Galle. He qualified himself in

40 England. There are two in the family, myself and my brother. My father was ill for some time before he died. He was a diabetic patient. From my childhood I was aware that my father suffered from diabetes. I used to help my father in his work, especially in his correspondence.

Mrs. R. M. Phyllis Perera Re-Examination

No. 27 Defendants' Evidence Mrs. R. M. Phyllis Perera Re-Examina-j tion —Continued. My earliest recollection of Uduwewela Estate is from 1928. I went to the land in 1928 but I did not take any active part till about 1931 or 1932. When I began to know the land, Taradenitenna (A18) was partly planted and partly chena. I went to the land in plan X only after it was planted. That was about the end of 1930. The land in plan X was in my father's possession on behalf of my mother. The land in plan X had been earlier planted before it was in my father's possession.

I am now in possession of the land in plan X from 1930 continuously. I am also in possession of some land to the south of plan X—about 13 acres. Uduwewela estate is possessed in several blocks.

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While this case was pending I caused the block, of which plan X is a part, to be surveyed. A portion to the south of the land in plan X is my property by virtue of a final partition decree. That is the land that is called Dangollehenyaya. I produce marked D63 final partition decree and plan D63a in D.C. Kegalla case 9230, in which the plaintiff was Simon Cooray of Kegalla and in which plaintiff was allotted an extent of 6 acres and some perches, out of the plan D63a. My mother was the 5th defendant in that case. Simon Cooray was a clerk under Mr. D. G. Fernando. I am now in possession of the lots allotted to plaintiff in D.C. case 9230. Simon Cooray was my mother's nominee. These six acres is to the south of 20 plan X, referred to by the surveyor as defendants' tea garden. A portion of T.P. 405308, which is D17*a*, lies outside plan (X). That is also shown as defendants' tea-garden adjacent to T.P. 312359. All that, together with the land in plan X, comes to about 45 acres. The land that was the subjectmatter of partition case D63 is immediately to the south of what is referred to as T.P.405308 in plan X, and the portion of T.P. 405308 which is outside plan X is referred to as such in plan X. In plan X the II acres referred to in my correspondence is the portion shown as defendants' teagarden on the south in plan X. The partition decree D63 is dated 21.3.34. The action was brought after the purchase by Cooray of shares for my 30 mother. When I first saw Dangolle, it was planted. That was in 1931. The whole block of 45 acres is one plantation today. It has been in our possession from the time that I came to know it.

I produce marked (D64) plan No. 1444 dated 17.7.1928 for the land described as Koskolawatta of the extent of 7 acres 3 roods and 3 perches made by Mr. L. E. Marcus. It is described in D64 as containing young tea. That is the extent referred to as 8 acres in the correspondence. That extent is referred to in D12. The lands in schedule B had been surveyed, but I have no plan. They were surveyed once, but I lost the plan. The extent of the land in schedule B was about 20 acres. Land A18 has been surveyed more than once. (D29 read to witness). Taradenitenna has been conveyed to my mother with reference to plan 1342 which I have produced as D7. There was another plan for Taradenitenna which I produced as D53, which shows the land in three blocks. (Shown D7). Of the extent shown the tablet shows that lots 1, 2 and 5 are encroachments by Dodantale Estate. Plan D53 does not show the encroachments and that is why the extent is less. From 1929 I have been in possession of Taradenitenna continuously. Plaintiff or plaintiff's predecessor have not possessed any portion of that land at any time.

No. 27 Defendants' Evidence Mrs. R. M. Phyllis Perera Re-Examination — Continued.

My father was a notary. Before that he was in Government Service. He has travelled abroad. The extent I was in possession of was 45 acres in one block, 18 acres (A18), nearly 8 acres Koskolawatta and the area in schedule B. I was myself not acquainted with the incidents of my 10 mother's application P117. I knew that there was such an application but I did not know any other details. My father made an application on behalf of my mother for a Crown settlement because the lands were chena and my father thought that they belonged to the Crown. Most of them were chenas. The deeds that my mother had at that time were D29 and D₃₀. D₂₀ was a conveyance from D. A. R. Senanayake going back to the Boyagoda title. I pleaded that title as an alternative title in the amended answer. Plaintiff has produced some of the deeds in that chain of title. In my amended answer I state that T. B. Boyagoda was the owner and that he conveyed by Pro8 to Karuppen Chetty. I did not produce that deed because plaintiff produced it. Karuppen Chetty 20 mortgaged it to one Letchiman Chettiar. I produce marked D65 mortgage bond 369 dated 16.8.20 by which Karuppen Chetty mortgaged a number of lands to Letchiman Chetty and another. Plaintiff produced as P114 the conveyance in favour of Letchiman Chetty. I produce marked D66 deed No. 1377 of 16.5.27 by which the transferees on P114 conveyed to one James, who by P115 conveyed to Senanayake, who by deed D29 conveyed to my mother. D66 describes Uduwewela Estate as parcel No. I and gives the northern boundary as lands claimed by villagers and Ambulugala Village boundary. The lands in Marcus' plan D62 do not reach up to the Ambulugala Village limit. D29 describes Uduwewela 30 Estate as comprising lands situated in Uduwewela and the northern boundary as the Ambulugala Village limit. The lands purported to be conveyed to my mother on D29 are referred to in D29 as depicted in plan 1340. If the lands that my mother got on D29 are restricted to plan D62, the description of the northern boundary is inaccurate.

All the deeds in the alternative title pleaded by me give the northern boundary as Ambulugala Village; from P108 to D65. Between Uduwewela and Ambulugala is the village of Polwatta. North of Polwatta is Ambulugala. The lands in schedule B are situated in Polwatta. They are between the lands in plan 1340 (D62) and Ambulugala village limit. (Shown D30). D30 includes the lands in Marcus's plan D62. It catches up other land. They are the lands in schedule B. The lands in schedule B have as the northern boundary Ambulugala Village limit. (D30 read to witness). The term "Ahakwe" in D30 means outside. In D30 the lands in D62 are caught up with the lands beyond it.

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No. 27 Defendants' Evidence Mrs. R. M. Phyllis Perera Re-Examination —Continued The application P117 was for lands in Polwatta, Dodantale and Uduwewela.

Further hearing on 8th, 23rd 24th September, 1952 and 1st October, 1952.

Intd. N. S., D. J.

Intd. N. S.,

D. J.,

20.8.52.

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20th August, 1952. J.S.

8.9.52.

Appearances for plaintiff as before.

Appearances for defendants as before, except that Mr. Advocate W. D. Gunasekera also appears for the defendants.

MRS. MARY PHYLLIS PERERA, recalled, sworn :

FURTHER REXXD:—It is not correct, that the land in plan (X) had been earlier planted before it was in my father's possession. I do not remember having said so. In point of fact, it was not planted before it came into my father's possession. Do is a letter from the Tea Controller 20 to my father and is stated to be a reply to a letter dated 23.7.34. I was cross examined with regard to letter Do where the Tea Controller states that the R. M. gives the extent of 80 acres and that my father had given the extent as $86\frac{3}{4}$ acres. Out of the extent of $86\frac{3}{4}$ acres, $2\frac{1}{4}$ acres are seedbearers, as stated in D9. Excluding the $2\frac{1}{4}$ acres the balance acreage is $84\frac{1}{2}$ acres. Letter D₉ refers to a letter of Mr. Fernando dated 23.7.34, to which it is a reply. I have a certified copy of that letter with me and I move to mark it in order to show what the Tea Controller is referring to in D9. I produce that letter D67, which is the letter referred to in D9. In D67 my father has stated that there was a 7 acre-block which was 30 planted in 1929 and subsequently neglected, and that is why there is a difference of 7 acres between what the Headman states, namely $77\frac{1}{2}$ and what is in his return, namely $84\frac{1}{2}$ acres. The letter D67 refers to the Tea Controller's letter of the 20th July, 1934, to which it is a reply. I produce the Tea Controller's letter of 20.7.34 (D68). According to the correspondence, in July, 1934, there were $84\frac{1}{2}$ acres planted and $2\frac{1}{4}$ acres seed-bearing.

I was also questioned with regard to the number of tea-pits or holes that had been dug. The figures which I gave from D51 were put to me. In giving evidence I stated that the number of pits was 192,563. That was up to May, 1934. Apart from the tea that was planted between 1928 and 1930, there was also a portion in old tea at the time—Taradenitenna about 8 to 10 acres. Subsequent to 1930 we got a block that was planted from Kiriukkuwa. The extent of that block was 4 acres. We got another block, a little of which was planted, from the partition case—about 6 acres. About 2 acres went for nurseries. Apart from the actual tea-plantation, there were buildings and roads. There was some part of the estate which was not planted in tea—the rocky portions. The roads, the buildings and the rocky portions would take about 4 to 5 acres.

I was also questioned in regard to the amount of tea-leaf that had been plucked. I have prepared a statement from D51 totalling up the green-leaf plucked from 1928 to 1939 and also from 1942 to 1948. For 1942/48 I got the figures from the check-roll figures sent to me by Juanis. I produce a statement prepared by me of the totals of the crop for the years 1928 to 1939 as taken by me from D51—marked (D69.) 'The crop figures for the various years are given and I particularly point out to the crop figures of 1938, which give the green-leaf as 114,220 lbs., which works out at 4 lbs. green-leaf for one lb. made tea, to 28,555 lbs. According to Mr. Hermon's inspection-report, he gives the assessed standard crop at 27,900 lbs. made tea.

My father died in 1942. D51 has entries only up to 1940. My father was ill for a little time till he died. From 1942 statements were sent by the Estate to Colombo through Juanis in the form of pay-sheets. Those pay-sheets showed the daily plucking. Those pay-sheets are available. I am calling Juanis to produce them. They were entered by Juanis. I produce the statement of the tea-crops for the years 1942 to 1948 prepared from the pay-sheets sent by Juanis—(D70).

I was also questioned in regard to certain portions of the land which my mother claimed on her title and which she possessed, but in regard to which claims were made by others. I have examined D51 and there are entries in D51 which show that my mother made certain payments to claimants. At page 269 of D51 there is an entry which reads : "Paid to claimants of Polwatta lands 213/60." D51 is in English. It refers to various items of expenditure on the estate.

I produce as (D71) a 16-chain diagram showing the Ambulugala Village, Polwatta Village and Uduwewela Village. In D71 the Crown grant block is shown on the middle of the eastern boundary. It bears Nos. P.P. 3994 and also T.P. 405308, which is the location of the Crown grant lot. The northern boundary of Polwatta village is Ambulugala village.

I produced in regard to the Crown grant block the deeds D29 and D30, and I was questioned as to whether my father had an earlier title to any of those blocks. D46 takes in lots A4, A5 and A6. It is a deed in favour of Punchimahatmaya and Dingirimahatmaya. The heirs of Punchimahatmaya have conveyed their 1/2 share on deed No. 28201 of 1.2.1926 (D72) to Wereke Unnanse, who has conveyed on deed 32114 of 23.4.28 (D73) to P. L. S. Cooray. Cooray is the one who bought the lands for my mother. (Mr. Advocate Weerasooria states that there is no deed from P. L. S. Cooray to the 1st defendant).

No. 27 Defendants' Evidence Mrs. R. M. Phyllis Perera Re-Examination —Continued,

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No. 27 Defendants' Evidence Mrs. R. M. Phyllis Perera Re-Examination — Continued The other half which was conveyed to Dingirimahatmaya was sold by his heirs, who recited D46, by deed 28096 of 15.1.26 (D74) to Weerakoon and Babahamy. Babahamy, who was a grantee on D74, sold to my mother.

I was cross examined on the point that I have not produced the deeds referred to in paragraph 35 of my answer with regard to block B7. I have those deeds. I have claimed 3/4th share of B7 on deed 35043 of 10.2.20 (D75) and also on deeds 28153 of 22.1.1926 (D76), 28420 of 17.3.26 (D77) and 191 of 21.8.31 (D78) all in favour of Charles Perera, who conveyed on deed 5438 of 31.10.1940 (D79) to my mother. I also produce deed 1324 of 29.9.37 (D80) in favour of Davith Appuhamy, who has conveyed to my mother on deed 4738 of 17.1.40 (D81).

In regard to the acreage of the estate, on which I was questioned, I have a certified extract showing the acreage tax for the years 1943 to 1951 which had been paid, which I produce as D82. Acreage tax has been paid on the **basis** of 100 acres.

I was questioned in regard to a statement made in P117 when my mother submitted an application for a Crown grant, the statement being that there were earlier deeds dating from the 1st May, 1873 onwards. I have been able to trace a deed bearing date 1st May, 1873. I have 20 applied for a certified copy of that deed. It is in respect of Miyanapalawa, which is known as Aradhana Elahena. It is lot A14 in schedule A.

I produce deed 953 of 1st May, 1873 (D83). It bears the same date as referred to in P117.

(Adjourned for lunch).

Intd. N. S., D. J., 8.9.52.

Trial resumed

MRS. R. M. PHYLLIS PERERA, recalled, sworn :

FURTHER RE-XXD :—I have produced D75 and the following deeds up to D81 for the land B7. (Shown D75 and D76). The 6th land in the schedules to D75 and D76 is B7. My earliest deed for that land is D75. All the other deeds are later than that. The extent of the 6th land in D75 is one acre one rood and 26 perches. The extent of B7 is one acre two roods and 16 perches. On the deeds the boundaries are different, but the boundaries in D75 and D76 are for the actual land we possessed. P61, the last deed in the chain of plaintiff's title, is a deed of 1919 and the boundaries in P61 are identical with the boundaries of land B7 and with those of land B6. I have not produced a deed for land B6.

There is no separate deed for lands A4, A5 and A6 in favour of my mother, but there are deeds for those lands in favour of P. L. S. Cooray, the nominee of my mother, for one half, and for the other half my mother

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has a deed which was handed over to Counsel. (Mr. Advocate Weerasooria refers to the evidence of the witness at page 99 about Totapoladeniya and deed D45).

As far as I am aware that deed has not been produced. On page 55 of D51 there is an entry which shows the **cost of** planting 32,450 tea plants. On page 45 of D51 under date June, 1929 there is an item which reads: "For planting tea plants Rs. 14/95." I stated on the last date that Taradenitenna was never referred to as the new block, but at page 19 of D51 there is a reference to Taradenitenna new block. On page 31 of 10 D51 there is an item—"Green leaf Taradenitenna," and another item— "Green leaf new block," The latter entry does not refer to Taradenitenna.

FURTHER RE XXD :—In regard to the entry " for planting tea plants 14/95," the rate of planting is in other entries in D51.

> Intd. N. S., D. J., 8.9.52.

P. D. JUANIS, sworn, 52, Superintendent, Uduwewela Estate, Mawanella : I first went to Uduwewela Estate at the end of November, **20** 1929. I was there on the estate from that day up to now. I am now the superintendent. When the surveyor went for the survey of the lands which are in dispute in this case, I was present. Three plans were made. One was for Taradenitenna-plan Y. There was another plan X for an extent of 32 acres and 25 perches, and another plan Z for 13 acres I rood 32 perches. When I went to the land in 1929 a portion of Taradenitenna was planted. There were 9 acres old tea. There was new tea in 6 acres and the rest was very young tea. From 1929 up to date I have been in charge of Taradenitenna block. When I went the whole of the 32 acre block was planted. The 13 acre block was not planted at 30 that time. It was planted in 1938 or 1939. Till 1929 up to date I have been in possession of the 32 acre block and the 13 acre block. The 32 acre block is claimed by Mrs. Perera and her mother on a Crown grant. Adjoining that there is other land claimed by them but not in dispute in this case. Adjoining the 32 acre block there are about 10 or 11 acres belonging to the defendants. The 32 acre block and the 10 acre block were possessed as one block. When I went to the land it was barb-wired. That barbed-wire is still there. The 13 acre block is a little away. It was planted in tea in 1938 or 1939. Before that it was planted with catch-crops by cultivators. The 13 acre block was given out for the 40 planting of catch-crops by me. I first gave a portion for catch-crops, in 1930 and from time to time subsequently till tea was planted. I attended to the management of these three blocks of land. Before I was in charge, Wereke Unnanse was in charge of the land. His temple was about 1/4 to 1/2 mile from Taradenitenna. After I took charge I got

No. 27 Defendants' Evidence Mrs. R. M. Phyllis Perera Re-Examination -Continued.

P. D. Juanis Examination

No. 27 Defendants' Evidence P. D. Juanis Examination — Continued everything done, which need be done on an estate, such as weeding, plucking, etc. I got the leaf plucked. The leaf was sold to Leuke Estate factory, which is about two miles away. I sometimes sold green-leaf and sometimes I got tea made and sent to Colombo. During that time I kept accounts on the estate and forwarded the accounts to Colombo once a month. 2nd defendant's father died in 1942. After he died I used to send the accounts in a check-roll list. I sent accounts of the tea plucked. I used to write the accounts. I have all the accounts from 1942 to 1948 except for a few. Subsequently a statement was made by and defendant of the total amount of leaf according to the statements (Shown D70). This is the statement that was made. I have in I have. Court all the original pay-lists, and the details in them with regard to the green-leaf have been entered up in statement D70. I produce as D84 the statement for November, 1942, D85—the statement for November, 1943, D86—the statement for November, 1944, D87 the statement for November, 1945, D88-for November, 1946, D89-for November, 1947 and Doo for November, 1948.

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When Mr. Hermon went round the estate, I was present. I went round with Mr. Hermon. He went round the blocks that are now in dispute in this case. Since I went in 1929, no one else was in possession of any part of these blocks at any time other than myself, on behalf of the defendants.

While I was in charge I wrote certain letters to Colombo. (Shown D54, D55 and D56). They are in my hand-writing. They all refer to cultivation work done and the plucking of tea, and catch crops on the chena portion of the estate.

The 13 acre block was planted in 1938/39. I got it planted. There was a dispute raised by some outsiders saying that they had some rights. By that time 1/3rd of that block had been planted. The villagers raised disputes. 2nd defendant's father got some deeds from the people who raised disputes without entering into litigation, and after that he planted the whole land. Nobody else made any claim. Nobody from Peries's estate made a claim.

P. D. Juanis Cross-Examination

XXD:—I first went to the land in November, 1929. I went towards the end of November, 1929. I was paid for November, 1929. I cannot remember if the accounts show that I was paid for November, 1929. I am sure that I was paid for November, 1929. (Shown D51). At page 55 the expenditure is shown for November and December, 1929. The salary paid to me is shown as Rs. 50/-. I was paid Rs. 50/- a month at the start. The Rs. 50/- shown in D51 is for one month. It must be for November. The handwriting in D51 is that of Gunawardane, a clerk of 2nd defendant's father. He is dead now. He died about 10 or 12 years ago. Before I went to the estate there was a priest called Dharmaratana. He was paid a monthly salary. He was in charge of the estate. It is that priest who is known as Wereke Unnanse.

As against November and December my salary is shown as Rs. 50/-. Dharmaratana's salary is shown as Rs. 50/- for the two months. He was paid Rs. 25/- a month. The Rs. 50/- paid to me must be for one month. I cannot say for what month that Rs. 50/- was paid to me. I went to the estate on the 29th or 30th of November, 1929. (Shown page 57 of D51). I went from Hapugahatenne estate in Veyangoda district to this estate. I was working at Hapugahatenne for 10 years. Till 29th November, 1929 I did not know anything about this estate. I do not know what deeds the owner had for this estate. I know the lands but I do not know the 10 boundaries. I cannot compare the boundaries in the deeds with the boundaries on the ground. It was not necessary for me to compare them. When I went, I took charge of an estate, but I cannot say how many acres. Ever since 1929 I have remained on this estate. I am in charge of 84 acres today.

If the 2nd defendant has stated in her evidence that her mother is in possession of 100 acres, I cannot say then who is in charge of the balance 16 acres. I cannot say what extent I took charge of when I went as Conductor, except that I know that the extent I took charge of was fenced round with barbed-wire. I knew the extent of the land after 20 this case was filed. Before that I thought that the extent may be about 100 acres odd, but I cannot be definite.

When I took charge the estate was in 4 blocks. They were Taradeniya, new block, Polwattehena and 8 acre-block. The 8 acre-block is also called Koskellewatta. These are the names by which I knew them. I used those names but there were other blocks by other names. The Taradenitenna—18 acres, new block—45 acres, 8 acre-block—8 acres and Polwattehena—13 acres. Polwattehena is in Polwatta. The 45 acreblock is in Dodantale, Uduwewela and Polwatta.

In D51 up to May, 1928, it may be that there is reference only to the 29 acre-block, II acre-block and $2\frac{1}{2}$ acre block and Taradenitenna. I went to the land in 1929 and I cannot say what those references were in 1928.

In February, March, May, June, November and December, 1930 reference is only made to a 34 acre-block, in D51. That is the "Aluthkalle" (new block). That does not include Polwattehena. It is only a part of the 45 acres of "Aluthkalle." The land has been divided for the purpose of planting.

I did not do a business of buying and selling tea. I have obtained advances from one Fernando of Didulla Estate for the purpose of 40 supplying green-leaf to him. I have supplied green-leaf to Fernando from this estate. I did not supply other people's green-leaf to that Mr. Fernando.

The entirety of the area dealt with in D51 for 1930 is the 34 acre-block.

No. 27 Defendants' Evidence P. D. Juanis Cross-Examination -Continued

No. 27 Defendants' Evidence P. D. Juanis Cross-Examination --Continued. *Q*.—I put it to you that right through 1930 you were doing plantation work only on a 34 acre-block ?

A.—No. I did planting in other blocks also. They are Taradeniya and another portion of Aluthkalle.

Q.—Can you state the extent in acres under plantation when you took charge in 1930?

A.—I cannot say what the extent in acres was.

When I went Koskollawatta was planted, but it was neglected and in jungle. Polwattehena was not planted. The whole of Taradenitenna was planted when I went.

There was a mixed plantation of tea and rubber about $1\frac{1}{2}$ acres.

It may be that in D51 the entries for the year 1931 also refer to expenses on an extent of 34 acres and Taradenitenna. There are other blocks also.

In 1930 and 1931 tea was plucked. I plucked tea on 8 or 9 acres of Taradenitenna from the time I went there. The whole extent of Taradenitenna is 18 acres. The old tea was 8 or 9 acres. In 1931 I plucked from the Aluthkalle also, but I cannot give the extent of the portion plucked in acres. For 1932 there are 3 references to Taradenitenna in D51. There is no reference to the 34 acre block in 1932 in D51 20 on the expenditure side because no work was done on that section during that year. The land was neglected for some time and again it was cleared. During that period tea was plucked but other work was neglected. No expenses were incurred on attention to that block. I cannot remember for how long the land was neglected. There was a seed-bearer block of $2\frac{1}{2}$ acres. There was an income from the tea-seeds.

Q.—I put it to you that for 1932 to 1936 very little maintenance work was done on this estate ?

A.—Whatever moneys that were spent are shown in D_{51} .

(Shown D54). I refer to 80 measures of green-gram. Those 80 30 measures were 1/3rd of the crop which the land owner gets. It was planted by some villagers and I cannot say from what extent it was. That extent was given from Polwattehena. D54 refers to some tea I have plucked. That is from Taradenitenna. The term "new division" in D54 refers to the "Aluthkelle," and not to the new division of Taradenitenna.

(Shown D55). I cannot say from what acreage the 4 gunny bags of kurakkan referred to in D55 have been received as the land owner's share. The share of the kurakkan crop also is 1/3rd to the land owner. In addition to the 4 sacks much more kurakkan was received for the land 40 owner's share. I cannot remember how many sacks were received.

A labourer plucks about 50 to 20 lbs. of green-leaf, per day, depending on the flush. I cannot say from what acreage the 688 lbs. green-leaf referred to in D54 was plucked. In 1931 about 2 or 3 labourers used to pluck green-leaf a day. The kurakkan referred to in D56 was grown on Polwattehena.

y No. 27 Defendants' Evidence P. D. Juanis Cross-Examination --Continued

I had kept check-rolls even before 1942 and sent them to the 2nd defendant's father. I was working on a coconut estate at Veyangoda. I came to know about tea after I came to this estate. I was in charge of the cultivation of this estate. Whatever I did not know, I used to ask from Visiting Agent Gordon. There was a Kanakapulle also on the estate. He is in Galigamuwa now. It is about 4 miles from Kegalle. After I went to the estate I got him down. When I went there Wereke Unnanse was there. I do not know who Lokuappu referred to in D51 is. Subaneris came after I went to the estate. When I went to the estate there was no kanakapulle.

I know a man called Lucas. He is on the defendants' list of witnesses.
I do not know whether he was in charge of an estate. I do not know whether he was working on Kempitikande Estate. When I was working on defendants' land I was living at Taradenitenna—A18. I do not know where Lucas was living then. I know Ramiah, Kanakapulle.
I did not see any Ramiah but I heard that one Ramiah was living on Ambulugala Division. I do not know whether that Ambulugala division was in extent 150 acres. That division is not close to the land in dispute. There is a land of Mr. Ferdinando adjoining the 13 acre block.

(Shown D84). I give the labourers' names and the amounts and I have described the estate as Uduwewela Estate. When I sent D84 in 1942 I did not know the extent I was in charge of.

RE XXD:—Aluthkalle was planted when I went in 1929, but the tea on that block was in bearing and it was plucked from the end of 1930.
30 Tea can be plucked from 2½ to 3 years after planting. As the tree grows bigger the yield increases. From the end of 1930 I plucked from almost the whole area, within the barbed-wire. I did not pluck from a few trees here and there, which did not thrive. Different portions are plucked on different days. It is done so up to date.

In 1932 a pound of tea (green-leaf) was about 2 or 3 cts. It had very little value at that time. Very little labour was engaged at that time because it was not paying. Tea Control came into operation in 1933. Thereafter the price of tea improved.

About 3 or 4 acres of the chena land were given out at a time. Thefollowing year some other portion is given. Portion by portion was worked. Then after some years the first portion is given again. That happened till 1938. After that tea was planted.

P. D. Juanis

Re-Examination

Subaneris was brought by 2nd defendant's father to this estate. Subaneris did the planting work and he instructed me also.

> Intd. N. S., D. J., 8.9.52.

Further hearing on 24.9.52.

Intd. N. S., D. I.

Appearances as before.

N. W. Perera Examination

No. 27

Defendants'

Evidence P. D. Juanis Re-Examination

-Continued

N. W. PERERA, sworn, Superintendent, Westward Ho Estate, Nuwara Eliya : I was on Leuke Estate from 1944 to 1949. I came to Leuke estate in March, 1944 and continued to be there till March, 1949. My first appointment at Leuke was as Head-Clerk. Up to 1946 May I was Head-Clerk and after that I was superintendent till I left in 1949. Leuke Estate is in the district in which these lands in dispute in this case are. One of the blocks in dispute is a land called Taradenitenna. I know that land. It is on the boundary of Leuke Estate—on the east of Leuke estate, adjoining it. I knew Uduwewela Estate. Apart from Taradenitenna there was a block on the west possessed by defendant— 20 about 40 to 50 acres in extent. When I first came to Leuke I came to know Taradenitenna. It was 15 to 18 acres in extent. I came to know the 49 to 50 acre block later when I was appointed superintendent of Leuke. While going through the boundaries I found out that that block belonged to defendants. I knew Kempitikanda Estate belonging to plaintiff. I was the superintendent of Kempitikanda from 1947 June to 1948 July, while I was also superintendent of Leuke. While I was superintendent of Leuke and Kempitikanda I wrote letter D3. My signature is on D3. I wrote that letter to 2nd defendant in this case. (D3 read out). The proprietor of Kempitikanda referred to by me in D3 is Mrs. C. H. M. 30 Peiris, the plaintiff. There are three names referred to in D₃, namely Bulanehena, Indigollehena and Dantugehena. I have referred in D3 to Mrs. Peries having handed over to me a plan. In point of fact, the plaintiff Mrs. Peries handed to me a plan. I have stated in D₃ that the three blocks referred to in D₃ were in the possession of the defendants, although those three blocks fell within the plan of the plaintiff.

I could not take possession of the three blocks referred to in D₃ from the defendants who continued to possess them. I sent back to plaintiff the plan given to me in this connection by her.

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24.9.52.

No. 27 Defendants' Evidence N. W. Perera Examination -Continued.

Cross-Examination

(Shown D50). I find in D50 certain portions of the plan marked light-blue. One portion is separated off from the other. Leuke Estate is adjoining the portion marked in blue on the south, on the eastern side. When I was superintendent of Kempitikanda as well, I went to Kempitikanda from Leuke through the Utuwankanda road, and there is a footpath going through a field and going through Mr. Weerakoon's land into Ambulugala division. There is a road marked on D50 going through Dehimaduwa Village. Part of a footpath is shown, which borders the northern portion in blue in D50. There were three blocks of land by the name of Indigollehena, Bulanehena and Dantugehena and they were not in our possession but in the possession of the defendants.

I went from Dehimaduwa Village along a footpath to Ambulugala division. When I went by that footpath there was a 12 to 13 acre block in the possession of the defendants, which was shown on the plan of Ambulugala sent to me by the plaintiff. It was partly planted when I first came to know it. About 8 to 10 acres were planted in tea. That was in 1947 when I first took charge of Kempitikanda group. The tea was about 4 to 5 years old at that time. We did not take possession of that block.

When I came to know the 50 acre block it was in full plucking. Defendants were plucking it and their conductor Juanis was in charge. Taradenitenna was also owned by defendants and Juanis was in charge. The tea was in plucking on that block. There were three blocks as far as I remember-the 18 acre block, the 50 acre block and Taradenitenna, in the possession of the defendants and in charge of Juanis. The tea was sent to Leuke factory for manufacture. It was so sent until I left.

Adjoining the footpath I showed in D50 there is a portion coloured blue on the north. The footpath went past that portion marked T.P. 374781 in D50 and the 13 acre block is to the south of the footpath.

XXD :---Westward Ho Estate belongs to the Westward Ho Tea Co. N. W. Perera of Ceylon, Ltd. I have been there for one year and three months. Before that I was on Dunkeld, Dickoya for one year and II months, I went to Dunkeld from Leuke Estate.

I was Chief Clerk till 1946. I had no field work at that time. In D3 I have referred to Bulanehena, Indigollehena and Dantugehena. If I am shown the estate plan given to me by the plaintiff, I could identify these three blocks on that plan. (Shown P151). This is not the plan given to me by the plaintiff. (Shown P124). I am not sure whether P124 is the plan given to me by the plaintiff. (Shown P17). This even is not the plan given 40 to me by plaintiff. I am unable to identify on plan P17 any of the blocks I referred to in D₃. (Shown D₅0). I cannot identify the three blocks even in this plan. In D50 there is a footpath shown to the east of blocks 92 and 93. I cannot say what that footpath is, which I have shown now. I cannot show on plan D50 the course that the footpath takes to lead to Ambulugala division. It appears to me as if the full course of that footpath is not shown in D50.

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No. 27 Defendants' Evidence N. W. Perera Cross-Examination —Continued. There is a footpath to the east of blocks 92 and 93 in D50. I cannot say from the plan from where the footpath comes and where it ends, except what is shown there. I cannot say whether the portion of the footpath shown by me in D50 is the footpath used by me to go from Utuwankanda to Ambulugala division. Looking at the plan I cannot say whether the footpath that I used from Utuwankanda to Ambulugala division is shown or not shown in the plan D50. This plan is very confusing. Adjoining blocks 93 and 94 on the north is block 90 in plan D50. I can only say that there was a footpath to the east of the 13 acre block owned by the defendants. I do not know the boundaries of that 13 acre block. I do not know where the 13 acre block is in D50. The 13 acre block that defendants owned was about 3/4ths mile from Dehimaduwa Village. There was a cart-road to Dehimaduwa Village. That is the main Utuwankanda road.

Ramiah was the Kanakapulle I had in charge of Ambulugala division, in extent 150 acres in tea. He was living on the 150 acre block of tea. I cannot identify even Ambulugala division in D50. The entirety of Ambulugala was planted in tea.

I cannot say in what village the 13 acre block of the defendants is. Except from what I heard, I do not know whether that block was 13 acres or not. I did not want to verify its extent. I have gone into that block. When Juanis and defendants were planting, I went there because I knew Juanis well. They were planting a portion in 1947, about 4 acres. In that block that was all the plantation of the defendants which I saw. As a new plantation I only saw this 4 acre block and no other block of the defendants. I do not know when any of these blocks were planted in tea.

I cannot remember the extent of the three blocks referred to by me in D₃. I am unable to even give the approximate extents of those three blocks. In D₃ the plan referred to by me is the plan given to me by the plaintiff. The K.P. referred to in D₃ is Ramiah. I cannot remember how long Rodale was superintendent of Kempitikanda. In D₃ I have stated that I verified the blocks on the ground and that they fell within the plan given to me by the plaintiff. I did not get a reply to D₃.

Ambulugala division lies between Leuke and Karandupona, as described in P164. The plucking on the 150 acres of Ambulugala was supervised by Ramiah. I cannot remember whether the three blocks referred to in D3 were planted or not. The 4 acres which I stated were planted by the defendants, were out of the 13 acre block I referred to earlier, which was not in dispute. The three blocks referred to in D3 do not form part of that 13 acre block. I cannot recall today whether the three blocks referred to in D3 were planted or not at that time.

Defendants were possessing a 50 acre block. I have not verified whether it was 50 acres or not. It was commonly called by the villagers as the 50 acre block. I will not swear to the fact that it is 50 acres. I cannot say whether it is 30 acres or 50 acres. In between the 50 acre block and

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the 13 acre block is the land of villagers. It is about 600 yards' distance within the two blocks. The 50 acre block is about 400 yards away from Taradenitenna.

Going from Utuwankanda, if you pass through Mr. Weerakoon's land, you come to the 13 acre block. If you go through Leuke estate von come across Taradenitenna. Mr. Weerakoon is the brother-in-law of the plaintiff's husband. At the time I was in charge, the land possessed by Weerakoon had been transferred to Weerakoon and Ferdinando. Between the footpath leading to Dehimaduwa and Ferdinando-10 Weerakoon's land, there is a stretch of paddy-fields. Weerakoon used to come to the land once a month or so.

When I was Chief Clerk also I knew the various blocks.

I had no summons to attend Court today but I had summons to attend on the previous dates. I came all the way from Nuwara Eliva.

Ambulugala leaf was manufactured at Leuke factory. I cannot remember whether there was any difference in age between the Taradenitenna tea and the other tea belonging to defendants.

REXXD :--- I am in charge of Westward Ho Estate which is 375 acres in extent. It is owned by a Company. When I was superintendent 20 of Leuke, it was 400 acres in extent. I knew the portion which Ferdinando and Weerakoon possessed. The 13 acre block I referred to is about 125 yards from their land. I went into the 13 acre block. About 4 acres of the 13 acre block were being planted in 1947. The balance of the 13 acre block had already been planted at that time. The tea would have been about $2\frac{1}{2}$ to 3 years old. From my knowledge, when I went into that block, I estimated the extent of that block to be about 10 acres.

I wrote D₃ on 4.7.47 saying that a portion was encroached upon. The three blocks were encroached upon by defendants as individual blocks 30 shown in the plan of the plaintiff. The three blocks of land referred to in D₃ may have formed part of other portions of land possessed by the defendants. The three blocks were not near Taradenitenna. They were nearabout their land-Ambulugala estate. These three blocks were close by to the 13 acre block referred to by me earlier.

Intd. N. S.,

D. J.,

24.9.52.

A. M. PERERA, sworn, 62, Licensed Surveyor, Chilaw : I have been a surveyor for 40 years. (Shown D50). It bears No. 1304 and it has a 40 tablet. I have stated that it is a true copy of plan 1304 of Mr. Thiedeman. (Shown P151). I made a copy of plan P151 which is plan No. 1304. Plan P151 is divided into different lots. In D50 certain portions are coloured pink. They represent the lands in plan 329 (P124). I have

A. M. Perera Examination

N. W. Perera Re-Examina tion

No. 27 Defendants' Evidence N. W. Perera Cross-Examination -Continued.

No. 28 Addresses to

Court

superimposed P124 on Plan P151 and shown in pink the portions of P124 that come within P151. I have also shown in light-blue certain portions. The lands claimed in D.C. Kegalla case 6269 (this case) are in light blue. Those are the lands which are the subject matter of this action. There are two separate portions coloured light-blue. The southern portion appears in Mr. Frugtniet's plan (X) bearing No. 1078 and the northern portion in blue is in Mr. Frugtniet's plan (Z) bearing No. 1079. The lands appearing in plan (Y) are not shown because they do not come within plan P151. I made a survey myself of the 45 acre block claimed by the defendants. I have that plan (Mr. Weerasooria moves to produce the plan made by this witness—plan No. 4043A dated 23.1.52—showing the extent in plan X plus the portion of Uduwewela estate to the south in extent 45 acres 7 perches, marked D91. Objected to as the witness has been listed only after the 6th date of trial. I uphold the objection).

XXD :---Nil.

Intd. N. S., D. J., 24.9.52. 10

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Defendants' case closed reading in evidence D1 to D90. Addresses on 3, 4, 5 and 6 November, 1952.

> Intd. N. S., D. J.

24th September, 1952. J.S.

No. 28

ADDRESSES TO COURT

3.11.52.

MR. ADVOCATE C. E. S. PERERA with MESSRS. ADVOCATES W. WICKREMASINGHE and A. H. E. MOLAMURE instructed for plaintiff.

MR. ADVOCATE N. E. WEERASOORIA, Q.C., with MR. 30 ADVOCATE C. R. GUNARATNE instructed for defendants.

MR. WEERASOORIA ADDRESSES COURT :----

Plan X in extent 32 acres 25 perches made by Mr. Frugtniet. His report shows that that extent is claimed by plaintiff as referring to certain lots in schedule A other than lot A18. Lot 18 is in plan Y, in extent 18 acres one rood 14 perches. The lots are not adjoining. Plan Z depicts 13 acres one rood 32 perches. These lots do not adjoin the other lots. In D50 there is a superimposition which shows in blue plans X and Z. Plan Y is not shown. 159

Report P146 of Mr. Frugtniet, dated 18.4.1950. He states that plan X takes in certain lots into plan 1304 from schedule A. Land in plan Z includes certain lots in plan 1304. Land in plan Y is not shown in plan 1304. It is a question of identity. Surveyor reports that defendant elaimed all plantations in plans X, Y and Z together with houses, while the plaintiff did not prefer such a claim before the surveyor. Evidence of Mr. Frugtniet at pages 67 and 68. It has to be noted that Peries has not claimed the plantations as such, but only the land before the surveyor. Evidence of Peries at pages 42 and 43. The first plaint of August, 1949paragraph 20-shows that plantations were made from 1926. No com-10 pensation was claimed by plaintiff in the alternative. Then amended plaint in July, 1950-para. 21. Date of plantation 1926 in the first plaint in para. 20 is changed to 1929 in para. 21. Again no compensation claimed for plantations. During trial another amendment of plaint, when the year 1929 was put back to 1927 and in para. 35 compensation claimed in respect of lands in schedule A. Plaintiff has conceded that lots in schedule B had been planted by defendant. Evidence of Peiris at pages 42 and 43 where he says that he discovered an error of the dates after reading P73. Peries states that he claims the plantations but not 20 the two buildings.

Date of ouster not pleaded in the plaint or stated in the evidence. Surveys D17a to D17d made in respect of the Crown grant D17 of 7.8.30. Crown grant block of 29 acres 5 perches. Other surveys. D62 plan 1340 of 22.7.27 for 85 acres 2 roods 11 perches block. Plan D7—1342 of 22.7.27 by Mr. Markus for 18 acres 18 perches—Taradenitenna. Plan D53—No. 1443 of 17.7.28—for 17 acres 2 roods 30 perches, for Taradenitenna in two blocks. While all these surveys were being done on the land, plaintiff or her agents have not taken any action to stop or to assert their rights. It is in the evidence of defendant that these portions were barbed-wired. So also is Ratwatta's evidence and also Mr. Hermon's evidence. Hermon called by plaintiff.

Craib said to have known the land well. Page 39 of the evidence.
Craib and the other various planters have excluded lands in schedules A and B from their conveyances. P14. P15—Sale of September, 1946.
Plans 328 and 329 (P124) of 18.7.45 and 1st September, 1945.
Admittedly, P124 does not refer to any portions of the land in dispute. So also plan 328. Evidence at page 34 of Peiris. Page 10 of evidence. The land in plan 329 has been located in page 34 of the evidence. Evidence at page 155. The portions coloured pink in D50 are the portions in plan 329. These portions do not come within the area in dispute. In agreement P14 plans not referred to, except that a plan is in preparation. It is not that the blocks in dispute were not conveyed by Craib and Callander, but they did not agree to warrant and defend title. They have agreed to warrant and defend title. Plaintiff's evidence consists of documents relating to working of an estate and not to title. Even

No. 28 Addresses to Court --Continued. No. 28 Addresses to Court --Continued.

those documents do not refer to the portions in dispute, especially the 18 acre block. *Vide* P72 to P100, also P125 to P176 excluding P150 and P151.

PI to P2I deal with the present title from Boyagoda. P22 to P7I is the earliest title. P72 to P100 refer to documents relating to the working of the estate. P125 to P154. P154 to P176 also refer to documents relating to the working of the estate. This is not an attempt to show that the Ambulugala division included the land in dispute, but defence can from the internal evidence of these documents show that Ambulugala was not 150 acres in extent but at least 50 acres 10 less in extent. Vide P72 of 1.2.29. P78, P79. Hermon's evidence is that the total extent of the tea area is stated as 301 acres—Ambulugala 150 acres planted in 1927. P80, P82, P83 of 1942. Hermon states there, "I was shown no plan of the estate." P84, P85 to P87. Evidence at page 20 referred to about monthly reports. P85 states "Ambulugala tea in bearing 150 acres." Same in P86 and P87. P127 to P137 are monthly reports. These reports state that Ambulugala division is 150 acres in extent. The question is whether the 150 acre extent was correct or whether that extent included the lands in dispute. P125 and P126 refer to the books of Kempitikanda Estate. Pages 29, 20 30, 31 of evidence where Peries has stated that he could not state where the books are to be found. Peries did not produce the books because the books do not help plaintiff's case. P155, P156, P157 also refer to Ambulugala as 150 acres. P158 to P162 are the ledgers, on which are based the monthly reports. Bottom of page 73 of evidence, merely refers to the production of the ledgers and nothing more. No attempt has been made to show that the figures in the ledgers must be for 150 acres and not for less or for more. In P153 there is a reference to a 80 acre block which is sought to be amalgamated and negotiations made for that. P166 is a 30 valuation report of Leuke and is irrelevant. P167 is also irrelevant. P168 is irrelevant. P169 gives the extent as 150 acres and also gives the value of the estate. It gives the total crop from Kempitikanda. Yatimahana and Ambulugala together. It is only a prospectus. Evidence at pages 74 and 75. P164 is the valuation report of 12.1.1936 by Mr. Gordon Fellowes. There Mr. Fellowes says-"'Tea in bearing 150 acres subject to survey, and jungle 50 acres subject to survey. P165 of 13.1.36 by Mr. Fellowes deals with Kempitikanda and Yatimahana. This is irrelevant. P170 is an assessment of 1933 of Kempitikanda by Mr. Gorton. No plan of Ambulugala was shown to Gorton. P171 of 20.9.34 by Ditmus. He says, "Area under tea is stated to be 40 301—Ambulugala 150, Kempitikanda 151."

P152 of 12.12.38 letter from Labour Controller to superintendent querying why correct acreages of tea and rubber not referred to. P153 reiterates the same point as in P152. No good reason why there should have been a shortage of 24 acres. P172 of April, 1944 by Bois Bros. Mere reference in documents to an extent of 150 acres is no proof that there were 150 acres. IMPORTANT EVIDENCE--1. Hermon's evidence

2. Correspondence between the plaintiff and defendants and the Tea Controller.

I. HERMON'S EVIDENCE—He inspected plaintiff's land in 1934 and 1942 and in 1938 went also to defendant's land. He has stated that in 1938 he went to a land different from the one he had visited in 1934 and 1942. His report P79 of 19.7.34. He states that the tea on Ambulugala division is stated to be 150 acres. 2nd report P83 of 1.2.42. He states "I was shown no plan." Postscript to his report P83. He refers to 10 excess of tea coupons over tea crop amounts to 274,596 lbs. viz: 68,649 lbs. for a year. Standard assessment was at 685 lbs. per acre. In report P70 Mr. Hermon says certain patches show a higher percentage of vacancies. In P83 he states that the estate does not appear to have been worked on full production and that he has no past record to go on.

2. PIOI to PIO7—PIOI is the registration of defendant's estate for 1933-34, as TZIII. Defendant's return gives the acreage as $84\frac{1}{2}$ acres. PI02 is the return for 1946/47 where the extent is given as 71 acres 2 roods odd. P103 of 6.3.48 by Peries. There he complains that there has been a double registration of an extent of 8 acres planted in tea. 20 P62, D7 and D64 referred to. Investigation was made and P107 of 20.3.40 is the finding. Page 71—evidence of Tea Controller. He states that he is satisfied that defendant has been in possession of 43 acres for which he has been registered. Mr. Hermon and the Tea Controller had come to the same conclusion. Hermon's report D12 of 11.7.38. His evidence at page 84, 85. D7, D62 and D64 extent is given as 80 acres 28 perches. D60 is a tracing made by Hermon attached to his report D12. D60 is a tracing made by Hermon of D62.

3. Letters between Peiris and the defendants. P88 to P100. It is a deliberate "try on." It would be clear that plan 1304 is a mere office 30 compilation and does not actually depict lots made after survey.

(Adjourned).

Further hearing on 4.11.52.

A. D. J., 3.11.52.

4.11.52.

Appearances as before.

MR. WEERASOORIA CONTINUES: P88 to P100 and D3 of 4.7.47. Correspondence started by Mr. Peries' superintendent sending letter D₃ to the defendants. Defendants' witness Perera's evidence, that he took over after Rodale left. P92 one but last paragraph states that the lands are **40** depicted in Plan 1304 prepared on certain dates. P97 by plaintiff.

No. 28 Addresses to Court —Continued.

No. 28 Addresses to Court --Continued.

Plaintiff's title. Chena land originally. Plantations in 1925 comparatively young. Greater part of estate not planted except a portion of Taradenitenna. Plaintiff's title through Boyagoda. PI to PI6, PI9, P20-proceedings, P21 on the mortgage bonds. Lands A1 to A18 and B1 to BIO described as chenas. Do plaintiff's title deeds apply to the lands surveyed by him? No vendor is called by plaintiff. No boundary owner is called. No Village Headman is called. Peries' evidence at pages 28 and 20 where he says that he could not distinguish one chena from the other, also page 37-" I was not present when Mr. Thiedeman made the survey. I cannot say who gave him that information." Plaintiff's husband did not say that Boyagoda gave Thiedeman the information. Page 58-Thiedeman's evidence. No earlier plan or earlier deeds given to him. He found the boundaries when he went to survey. His field-notes not available. Page 55. Lands shown to him by Boyagoda or his agents. Page 56-Peiris says that he does not know who gave the information. He does not refer to Boyagoda. Evidence of Peiris in XXn. shows that he was not able to identify the lands. Thiedeman has to be disbelieved because Peiris must have known that it was Boyagoda who gave the information to Thiedeman, but Peiris does not say so. Peiris' evidence at pages 41 and 42. Page 59—Thiedeman's evidence : "Except for the cut lines, there were no physical features on this land. The cuts looked new.... " Page 60. Thiedeman says that Peiris must have known that Boyagoda pointed out the boundaries. Page 37. Tablet in P151. How could Thiedeman have made up the tablet with its details on the scanty material placed before him? That information given to Thiedeman to prepare P151 has not been placed before Court. Lots in P151 cannot be related to the lands described in the deeds. Peiris could not have identified the lots by merely looking at the tablet, as the boundaries for the lots given in the deeds are not existing. Frugtniet's evidence on plan P146. He has been able to fix some lots and not fixed some. Frugtniet has over-reached himself when he went to the land with Peiris without order of Court. Frugtniet's plan and evidence based on Thiedeman's plan which is not sound. Pages 61, 62, 65 and 68 of evidence. Frugtniet's second visit after return to commission did not make him discover any new fact, assuming that he went at all. Page 64 where he states that there was nothing on the ground to show the different lots. P150. Pages 64 and 65—"I cannot say whether they were correct or not." Identification by the evidence of Frugtniet and Peiris does not help. Plaintiff has not proved that the land surveyed comes within the descriptions of the lands in the plaint. Frugtniet's plan and Thiedeman's plan do not coincide. Some lots fall outside, hence identity has not been proved. P151 bears no date of survey. Defence challenges that plan. At page 57 Thiedeman states that the omission to give date is a printer's error. Page 54-Thiedeman says that he has no field-notes. Boyagoda could not have given information for plan 1304 because Boyagoda was litigating against Craib and Callander and the Syndicate. Page 59 last paragraph. Evidence of Boyagoda's litigation in P18. ... P18 case in which Boyagoda was plaintiff,

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suing Peries, Ferdinando, Craib and Callander on 27.5.26. It is dated 4.5.32. P74 of 2.11.31 letter to Peries from Craib. Page 44XXn. of Peiris—" Shortly after I bought Boyagoda's title there was a litigation." In April, 1925 Syndicate had bought Boyagoda's title. Then there was litigation with Boyagoda. It is clear that Boyagoda could not have assisted Peries, Craib and Callander by giving boundaries to prepare plan 1304. Case P18 commenced in May, 1926. Then plan 1304 must have been with the Syndicate. Then it would appear that Boyagoda must have given the Syndicate ammunition to fight him. The earliest endorse-

10 ment on plan 1304 is April, 1928 and subsequent endorsements. P92—letter by Peries to defendant in which he states the lands in dispute are depicted in plan 1304 bearing dates April, 1928, May, 1928, January, 1929. No reference to 1925 or 1926. If plan 1304 had been made in 1925/26 then why was not this plan referred to in conveyance P15 and why the statement that a plan is being made? No necessity for a new plan. In P15 Craib and Callander refused to warrant and defend title even though they had plan 1304 which was made by Craib and Boyagoda themselves. In P15 there is reference to plan 1304 in schedule F Part I, Lot 70. Therefore in 1946, although plan 1304 was in existence, no one gave it any sanctity. Page 61 of Frugtniet's evidence on XI, M ZI. Page 64. P17 drawn on 12.2.51 and certified on 12.7.51. P17 not produced before Frugtniet when he went to the land in 1950. Page 68 of

evidence—P151 was produced. Page 69—He says that P151 is a copy and that he never saw the original.

Thiedeman's evidence at pages 55, 56.

Defence view is that 1304 was never regarded as a plan but as a sketch or a diagram only. That is why it was not dated. That is why a certified copy P17 was produced. Plaintiff's case for purpose of identity must rest on plan 1304 which has not been helpful. Plan P151 does not include Taradenitenna for which plaintiff has no plan.

(Adjourned for lunch)

Trial resumed

MR. WEERASOORIA CONTINUES :—defendants' case—Defendant is in possession. Plaintiff must prove prescriptive or legal title. Defendant's title to plan X—(1)Crown Grant D17 with plans D17*a* to D17*d* attached for 29 acres 5 perches.

(2) Portion of plan X claimed as Aradhana Ela hena on plan D32 of 11.3.32.

(3) Extent of 2 acres 2 perches, the title plan of which is P71 dated
40 10.3.1915 issued in favour of Sendiya but defendant possesses. Total 35 acres 17 perches. Total of plan X comes to 32 acres 0 roods 25 perches.

For Crown grant documents D2, D14 of 1929, P117 of 1929, D15 of October, 1929, D59 of 4.7.36, D16—Ratwatte's letter of 25.2.30, D16a—reply to D16, and D17 of 7.8.1930 with title plans dated 9.4.30.—D17a to D17d.

No. 28 Addresses to Court —Continued. No. 28 Addresses to Court ---Continued. Aradhana Elahena on Plan D32, D33—D40 referred to at pages 98 and 99 of the evidence.

For Sendiya's block, evidence relying on possession—page 100.

EVIDENCE for Crown grant at pages 94 and Ratwatte's evidence at pages 91, 92 and 93.

PLAN Y—in extent 18 acres 1 rood 14 perches. Plan D7 of 1937 for 18 acres 18 perches, D53 of 17.7.28 for 17 acres 2 roods 30 perches. Deeds D18 to D31 referred to at page 94.

PLAN Z—in extent 13 acres 1 rood 32 perches. No plan for that. Defendant is in possession of this land. Documents D41 to D46, D75 to 10 D81. D41 to D46 referred to at page 99, D75 to D81 at page 141.

ALTERNATIVE TITLE THROUGH BOYAGODAS :--P108 to P116/D29, also P66 and D30. Pages 22 and 23 of evidence. D30 is the same as P119 but the translation in P119 not accepted by defence. Correct translation is D30.

Defendants' case is that defendant is in possession on some deeds of certain lands. Defendant not obliged to show that lands possessed by and claimed by defendant bear the same names as plaintiff's lands. Defendant's XXn. proceeded on the basis of getting defendant to identify lots, but that is not the case for the defence.

Crown grant creating title cannot be challenged. Plaintiff must prove that Crown had no title. 13 N.L.R. 273. Admittedly chena. Hence plaintiff cannot rely on Village title. Amendment of plaint after trialparagraph 24—issue 8. That issue does not lead to any benefit for plaintiff. There has been no suppression of facts at all by defendants. D15 of October, 1929 on which the title plans were issued. On defendant's application P117 of 1929, lands were surveyed. Then Ratwatte's report D14. Then Crown grant D17 was issued with further survey on 9.4.30. Grant gives the very villages where the lots are situated. Gazette D2. P109. In PIO9 there is no chain boundary between Polwatta and Uduwewela like the other villages in the plan. PIIO. PIO9 and PIIO juxta post, show that there is no demarcation between the two villages Polwatta and Uduwewela. D71 is the same as P109. Crown admits that these lands are in Polwatta and the other two villages, hence no misstatement in the application P117 by defendant. For the block not covered by Crown grant in plan X, there is D_{32} .

Title dates from 1882 (D33) and plan of 1932 (D32) which applies to that block of 4 acres 10 perches out of X. Decree D40 of 1932 for this block. As against these plaintiff has only Thiedeman's plan.

SENDIVA'S BLOCK : Sendiya not claiming. Plaintiff cannot claim. 40 P71 Sendiya's plan. Plaintiff cannot get that benefit. Defendant is in possession.

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No. 28 Addresses to Court ---Continued.

PLAN Y—Deeds D18 of 1888 and D19 of 1898. D7 and D53 of 1927 and 1928. Plaintiff has no plan for this land. Taradenitenna is referred to in plaintiff's deeds of title, no doubt. Then plaint amended bringing in earlier title, tracing title from P48 and P49 by which plaintiff gives defendant one half. Defendant has never shared that land with anyone else. Volume of evidence of defendant's possession in account book D51.

BLOCK Z—Defendant's title fairly recent dating from D45 of 1926. D46 of 1857. Defendant is in possession. Therefore plaintiff has no possession and can only succeed on good legal title.

- 10 APPLICATION PI17—Paragraph 24 of amended plaint. Evidence at pages 114 and 115. Document D83 of 1.5.1873, applying to Miyanapalawa or Aradhana Elahena, which comes within defendant's title deeds. Pages 107 and 108 of evidence and page 39 of D51. Reference to $2\frac{1}{2}$ acres of Miyanapalawa or Aradhana Elahena. Hence no mistake in P117. Sketch attached to PI17. PI28. XXn. on plan that tablet was missing-plan D62. When Hermon inspected defendant's land he had 3 plans including D62 and also a tracing of the plan sent to him. Vide his report at the end. Tracing D60 made by Hermon in 1938 does not refer to any tablet and is identical with those portions of D62 sketched in PII7, and which are in D60. P117 however refers to D29 and also to Markus' 20 plan. No suppression in P117, because sketch made from D29 asks for a portion of what is shown in D29. D29 and D30. D29 dated 18.1.28 conveying the lot in Markus' plan in extent 85 acres odd describing it as Uduwewela Estate, having as its northern boundary Thelehetuwahena, live fence of Dangollehena, etc. Then deed of rectification D30 was made on 8.2.28 gives the northern boundary as village of Ambulugala and includes an extent of 100 acres. Compare P108 to P116 and D66 culminating in D29. It must be noted that D29 deals with less corpus than is dealt with in the earlier title. Therefore D30 only corrects the 30 error. In Pro8 Boyagoda after mortgaging to Chetty gives a consolidated description of 26 allotments with boundaries, and gives Ambulugala Village boundary also as a boundary in 1920. Conflict of translation of D30/P119. The purpose of D30 is really to bring in portions belonging to Uduwewela Estate outside the plan D29, which had by error been not included in D29. It was contended that D30 was
 - not registered, but it is registered on 13.7.37. It is not in the mouth of the plaintiff to say that, because plaintiff does not claim by prior registration. Originally property conveyed to 1st defendant and she on D31 of 9.8.36 conveyed to 2nd defendant. Then D30 was registered after the conveyance
- 40 D31. Pages 115—evidence of defendant on P117. The mention of D30 would have strengthened defendant's application and not weakened it as suggested by plaintiff's counsel in XXn. of defendant. In any event, the Crown before settling the lands, would have verified the situation and boundaries of the extent applied for. Page 95 of evidence. Why private surveyor was employed. *Vide* note in P117 that private surveyors could do Crown work on being permitted by the Superintendent of Surveys.

No. 28 Addresses to Court --Continued. Defendant's title dates back not to 1926 as stated earlier, but to D46 of 1857. D46 refers to three lands—one of one amunam, one of two pelas and one of three pelas. Its extent will be about 10 acres. D75 to D81. D75 is a deed of 1920. The extent in plan Z is about 13 acres.

OTHER DOCUMENTS—D63, D63*a* and D64. Necessary to show that defendant was in possession of 85 acres. D7, D14, D15, D17*a* to D17*d*, D32, D50, D59, D60, D62, D63, D71. These documents prove planting, crop figures and pay-lists. D51, D54-D58, D61, D69, D70, D84-D90.

D9 to D13, D13a, D67, D8. D3 to D5 relating to Tea Control.

D6 relating to plaintiff's title.

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D47 and D48 carrying plaintiff's title earlier to show that plaintiff's devolution of title is not correct.

Alternative title of defendant—in so far as Crown Grant blocks are concerned, title claimed on Crown Grant. Therefore alternative title not relied on. Separate deeds for the other lands. D65, D66. D82 which is a payment of acreage tax for 100 acres.

D51 and the correspondence in regard to planting. Ledger D51 is genuine from January, 1928 onwards. Entries in D51 supported by letters. Specific blocks referred to in D51. Hermon's report D12. Schedule B not dealt with in his report as he dealt with only tea.

CREDIBILITY OF WITNESSES :—Mr. Peries, on his own admission, disbelieved in every case he has given evidence. No evidence to corroborate his evidence that he planted the land. It was never his case that he planted, till he said that in Court. Mr. Ratwatte's evidence to be accepted as it is supported by documents. P117 written by Ratwatte to A.G.A. Nothing in it to show that the 18 acre block in tea referred to, applies to the land in dispute.

Mr. Montgomerie's evidence—page 72, where he states that he has no personal knowledge of the extent possessed by Kempitikanda Group. He was an office man.

2nd defendant's evidence. Known estate from 1928/29. No evidence that plaintiff was ever ousted. Defendant's possession by barbed wiring.

DEFENDANT IN possession. Section 110 of Evidence Ordinance that parties in possession presumed to be owners. 44 N.L.R. 539. Assuming plaintiff has title, defendant's possession of 20 years has prescribed in respect of plans X and Y. Re plan Z, D51 applies, giving details of planting.

If defendant succeeds question of compensation does not arise and also jus retentionis.

40 Intd. N. S., A. D. J., 4.11.52.

Further hearing on 5.11.52.

Reference in P117 that land was barbed wired. To be presumed that defendant barbed wired it in the absence of any other claimants. In D15 also live and wire fence shown in boundary. The same is to be found also in plan D62 made by Markus, filed in D29. In plan X also wire fence is shown.

Page 136 defendant's evidence on extent. Plan D64 for 7 acres, schedule B 13 acres and the 18 acres in plan D7/D53. D63*a* for 6 acres 10 1 rood.

Ratwatte's evidence on D15. D15 does not contain land outside Crown Grant. Plan 3994 only depicts portions settled by P117. For lots 1 and 2 in D15 plan D32 was produced. Defendant can set up title to these two lots by *jus tertiae*—47 C.L.W. page 12—Dharmalankara Thero vs. Ahammadu Lebbe Marikkar.

MR. ADVOCATE C. E. S. PERERA ADDRESSES COURT :---

Plaintiff to succeed must prove title. 52 N.L.R. 49—burden of proof.
Title means title from proper source. Title must therefore first be examined. If title proved, then owner presumed to be in possession.
20 D62 and PI48 made by Markus—has no tablet. The entire extent of defendants' planted land is to the south of Ambulugala division.

4 Villages—Ambulugala, Polwatta, Uduwewela and Dodantale. Plaintiff's case is that they are in possession of 150 acres while defendant's case is that they are in possession of a 100 acre block. Pages 112, 141, 142 and D82. Acreage tax paid for 1943/51. Page 118, defendant has stated that her mother was in possession of about 100 acres. Extent of 100 acres was reduced by two cases. 10 acres purchased by defendants later—page 140. After 1930 4 acre block from Kiriukkuwa and 6 acres in partition case obtained by defendant. Then defendant's title from 1928 only to 90 acres.

30 P124 of 18.7.45 made during the negotiations for purchase by plaintiff from the Syndicate shows an extent of 107 acres, viz: 43 acres less than plaintiff's land. Plans X, Y, Z made by Frugtniet also amount to about 43 acres. Oral evidence about 43 acres, at page 21 on P107. Also bottom of page 40 : "In 1942 the 43 acre block would have been in full bearing."... the Syndicate had obtained coupons for an extent of 43 acres in dispute in this case." Page 53 : "I am now in possession of 72 acres of that extent, Ferdinando is in possession of 35 acres and the defendant is in possession of 43 acres."

TITLE :—Plaintiff has village title for lands in schedule A. Defendant
40 has no village title. It has to be decided how far Crown grant will help defendant, also prescription.

SCHEDULE B—Plaintiff has proved title but defendant has not, and no question of prescription arises because defendant's title deeds are in 1939 and 1940.

No. 28 Addresses to Court —Continued. LAND A18—Plaintiff and defendant get title from common sources who disposed of undivided 1/2 shares.

THEREFORE parties are co-owners and the defendant's possession enures to plaintiff's benefit.

TITLE TO LANDS AI TO A17 :---(Mr. Perera files a pedigree setting out plaintiff's title clearly).

Question as to prior registration not pressed by defendants as the deeds of defendant and plaintiff do not refer to the same lands.

Defence argument that plaintiff did not claim before the surveyor is a mere academic argument because plaintiff had taken every possible step 10 to claim the land by his letters. Omission to claim compensation not to be taken against plaintiff. At the best it is an omission of legal advice. Defendant herself has admitted that there is no dispute to the land in P124. Deeds P14 and P15 contain all lands in schedules A and B. Plan P17 shows the blocks. It was made in 1926. Character of land has changed since 1926 and is now cut up into blocks as it is a tea plantation. The blocks are shown in the order of their purchase from various owners. Pages 7 and 33 for evidence of identification of blocks. Plaintiff's identification of the lots challenged in XXn. at pages 36 to 38. Plan D62 bears out the identifying land-marks given by Peries in his evidence. Vide 20 P150 giving the manner in which Peries identifies the various lots. Peries' XXn. on identification has not broken his evidence. Therefore his evidence of identification stands. Also pages 41 and 42.

(Adjourned for lunch).

Trial resumed

MR. PERERA CONTINUES :---Sketch on PII7 bears out the identification of lot AI/106, the southern boundary being Village limit. The northern boundary of lot A10/97 is Thelehetuwa shown in sketch on PI17 and PI48. PI15. Summary of identifications : Note A12 and A13. Loku Banda and Lokukumarihamy mentioned, as their Walauwehenas. 30 XXn. on identification stopped with 3 lots because Peries' evidence survived the test. Defence has not shown that identification is wrong. No conflicting evidence in XXn. Nothing irregular in plaintiff asking Frugtniet to go to the land to identify it, as commented on by defence. If plaintiff has proved title, identified the land showing the blocks in the plan, then there cannot be any doubt. Then defendants' deeds would not apply. Defendant's reply to this at page 101 :--...." P124 does not cover any of the portions of my claim." Page 112: "I do not know the exact location of the lands as described in D29, but I knew them by their names as they were worked on the estate." Page 113: "All the 26 lands are in 40 Uduwewela Village....I am unable to say whether lands I to 26 in Pro8 are the same or different from lands AI to AI7, but I know the lands we possessed." Defendant has not proved title. Page 114: "All the 26 lands

forming Uduwewela Estate, except one land, fall within Uduwewela Village according to the deeds P108, P115, P116, P118 and P119.... Looking at P148, the greater portion of the lands depicted therein is in Polwatta Village, but D29 in my mother's favour does not describe any of the lands dealt with on it as in Polwatta. It would be correct to say that the lands dealt with on D29 are not the lands depicted in P148."

Page 118: "I have not gone round the boundaries as set out in D30, but I have gone round the whole land as I know it. When I knew the land, it was fenced round with barbed-wire, and I therefore did not seek10 to apply the boundaries in the deed given to me, to the property."

BARBED-WIRE FENCE :- D62 does not show any barbed-wire fence except on south-west and north-west, but D15 shows wire fences. The statement in P117 that land is barbed-wired is belied by D62 where there is wire-fence only on two portions.

Page 129 to be noted : "I did not know whether those title deeds in our possession referred to those lands. I have not even now checked that up." Defendant has not made any attempt to place on the ground the land she claims on P108 and its following deeds, nor witnesses called by defence to place the lands in the deeds on the ground.

Schedule B:—Page 47 of the evidence. Peries not XXd. on his evidence about schedule B. Defence also has not led any evidence about schedule B. Evidence of defendant at page 129 would also apply to schedule B. In letter P92, forming one of the group of letters P88— P100, which was correspondence between the parties prior to action, plaintiff has set out the lands claimed by him. In defendant's letter P94, replying to P92, where defendant states that she admits the plaintiff's predecessor's title, defendant wants the plaintiff to establish title in plaintiff herself.

P108 deals with 39 allotments. The first 26 are said to form 30 Uduwewela Estate with boundaries and extent 100 acres. These boundaries and the extent run through all defendant's title deeds, except for the mention of a plan in D29. What then was conveyed to defendant was land in Uduwewela Village. By making plan for land in Polwatta, defendant cannot become the owner of land in Uduwewela Village. Defendant's evidence at page 114 :--- ''.... Looking at P148, the greater portion of the lands depicted therein is in Polwatta Village....It would be correct to say that the lands dealt with on D29 are not the lands depicted in P148." Defendant had admitted that the lands depicted in D62/P148 are not the lands purchased by defendant on their title deeds D29 etc., but is a plan of lands in another Village. Page 127 of defendant's evidence :---With regard 40 to A12 defendant has not produced the deeds, and also with regard to A5, A6, A9 and A10 and A11. Page 142: "There is no separate deed for lands A4, A5 and A6 in favour of my mother, but there are deeds for those lands in favour of P. L. S. Cooray.... " Defendants plead that lands A2 and A7 are not in their possession-paragraph 26 of answer. Page 21 of evidence.

No. 28 Addresses to Court --Continued.

No. 28 Addresses to Court —Continued.

VILLAGE TITLE FOR LANDS IN SCHEDULE B:-Page 14 and the following pages. Vide pedigree setting out title for lands, in schedule A, and lands in schedule B filed of record. Defendant's answer to this is to produce some deeds that she has not proved to apply to the lands in schedule B to the plaint. No XXn. by defence on plaintiff's title to the lands in schedule B. Pages 126 and 127 of evidence :--- '' I did not make any attempt to identify any one of those lands on the ground by their boundaries." P56, P57, P58 were plaintiff's deeds for land B2. Defence produced D44 of 1940. The extent and boundaries in those deeds are not the same. Defendant has stated that her deed D44 would not apply to the land claimed by plaintiff on P56. For B1-D41, D42, D43. Plaintiff has produced for B1-P68 of 1894, P69, P70 and later deeds. Defendant has produced D41 of 1935 and later deeds. Defendant's evidence is that the deeds that she has produced cannot apply to the land BI as described by the plaintiff. Page 129 of evidence:---"All the deeds I have produced for claim any of the lands in plan Z." (Viz. lands in schedule B). There is no evidence to support 1st defendant's claim to lands in schedule B.

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LAND IN PLAN. Y—A18 :—(Counsel for plaintiff gives a summary of 20 defendant's title for land A18 and for lands in plan Z). Defendant's deeds are D18 of 1888 and D19 of 1898 in favour of one Somananda. Plaintiff's title for A18-deed P48 of 22.12.1867-is a transfer by G. L. Kumarihamy to Medduma Kumarihamy of an undivided 1/2 share of A18 described of (One amunam=5 acres). (8 lahas=one acre). That two amunams. title is passed to Boyagoda as shown in the pedigree. On the same day as P48, the vendor on P48 executed P49 for the other 1/2 share in favour of one Loku Banda. It is the title on P49 that could have come to defendants for the other 1/2 share, but defendant's earliest title deed D18 for A18 is 30 1888. D18 must then deal with the other 1/2 share dealt with on P49. D18 is a transfer by E.M.Loku Banda by inheritance from his mother Erawpola Lokukumarihamy, but this Lokukumarihamy has disposed of the entirety of her interests by P48 and P49. Somananda, the vendee on D18, in spite of D18 in his favour, gets another deed D19 of 1898 in his favour for the same land from one Loku Bandara. Examination of defendant's title for A18 shows that defendant's title fails for A18. That is why defence does not want to go beyond D19. Defendant's evidence at page 124. In D18 and other deeds for A18 the land is described as in extent 6 pelas, which is about $1\frac{1}{2}$ amunams, and cannot therefore be 17 or 18 acres as shown in the two plans produced by the defence. 40

PLAINTIFF'S POSSESSION :--- Documents :---

1925—Plan P17

1927–P72 of 1.2.29 and balance-sheet P73

1932—P155 of 11.4.32 (A. P. Craib), P175 of 18.3.32 (A. P. Craib), P176 of 5.3.32 (Bois Bros.)

- 1933--P156 of 29.5.33 (A. P. Craib), P77 (Assessment), P78 of 21.9.33 (Appeal), P76 of 3.8.33 (Return), P170 of 21.9.33 (R. P. Gorton).
- 1934 P79 of 19.7.34 (Hermon), P171 of 20.9.34 (Ditmus)
- 1936—P164 of 12.1.36 (G. Fellowes). P169 (Prospectus), P82 of 6.11.36 (Commr. of Labour)
- 1938–P152 of 12.12.38 (C. of L.)
- 1939--P153 of 18.1.39 (do.)
 - P157 of 3.2.39 (A. P. Craib)
- 1942—P83 of 1.2.42 (Hermon), P85 of December, P138 to P145—monthly returns
 - 1943—P86 (December monthly return)

1944—P84 of 5.6.44 (H. C. Rodale), P87—Monthly return for December, P127—P137 (January to November Monthly returns).

1945-P14 of 18.11.45-agreement

1946-P15 of 27.9.46 (Purchase), P17/P151.

Thiedeman's evidence to be accepted. Page 54 of his evidence, also pages 55 and 56. Thiedeman's evidence does not contradict Peries' evidence. Lands shown to Thiedeman by Boyagoda, Headman or by villagers—evidence at page 55. Page 56:—"....He did not ask me
20 how I came to get the information on the schedule." O. F. Peries' evidence at page 37. No inconsistency. Defence contention that Boyagoda would not have given information because of litigation fails because of P18. P18 refers to litigation which began on 27.5.1926. Survey for P17 was in November, December 1925 to June, 1926. Therefore no litigation during survey. Syndicate bought Boyagoda's title on P4 on 1.4.25 from Senanayake. Thiedeman's evidence disinterested and to be accepted.

A. D. J., 5.11.52. No. 28 Addresses to Court ---Continued.

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Further hearing tomorrow, 6.11.52.

A. D. J.

5th November, 1952. J.S.

6.11.52.

Appearances as before.

MR. ADVOCATE CYRIL PERERA CONTINUES :---

Page 39 explaining why Plan P17 not mentioned in P15. Plan not referred to because there were lands not covered by plan P17. Lands bought after P17 was made and included in it by two surveyors who have
40 endorsed the plan. Reference to plan P17 is in one deed and also referred in land F.70 of P8 dated July, 1930. Pages 38 and 39—Peries states that plan was handed to Tea Controller and referred to in P103, P105 and

P106. Page 40 Peries explains why plan not mentioned in the deed to him and why new plan was made. Owners not willing to warrant and defend title because there were squatters on the land. Therefore plan P124 made. Letter P72 of 1.2.29-"Expenditure on Ambulugala 150 acres new clearing Rs. 27,980/90 for the season 1927." Strong evidence that land planted then in 1927. P73 (Amended balance-sheet) for the year ending 31st December, 1927 and referred to in P72. Syndicate could not have been deceived if 150 acres had not been planted. P155 of 11.4.32 signed by A. P. Craib, which is the account for the year 1932. Ambulugala tea is shown as 150 acres in 1932. Tea crop from 10 Ambulugala is shown at page 3 as 80,000 lbs. made tea and nothing from Yatimahana. Page 3 of P155: Weeding 150 acres at Re. 1/- per acre, roads and drains at Rs. 2/- per acre, boundaries 25 cents per acre, manuring 5 cwt. per acre." P156 estimates for the year 1933. Estimate for tea account at page 2 is for 150 acres. These show that plaintiff and Peries were in possession of 150 acres. Letters P175 and P176 of 18.3.32 and 15.3.32. In P176 Craib refers to mature tea. There is a reference in this to P155. P175 is a reply to P176. It states that output without manuring will be less. This type of people, like the Syndicate, would not like to lose possession. P76 Tea Control return of 3.8.33. Reference 20 to Ambulugala over 5 years. These are returns as at I.I.3I and hence the tea did not reach full maturity. P77 (Assessment), P78 (Appeal), P170 assessment made by R. P. Gorton dated 21.9.33 for Ambulugala 150 acres. Page 57 of D51 shows a payment for the year 1929 to R. P. Gorton of Rs. 50/-. The actual amount was paid in April, 1929, as shown at page 41 of D51. Also at page 4 of P51 an entry dated 14.5.28 of payment to R. P. Gorton Rs. 32/- and for visiting the estate Rs. 50/-. These entries would show that R. P. Gorton knew what the defendant's Uduwewela Estate was, because the evidence is that he was a planter on an adjoining estate. It is the same R. P. Gorton who made assessment 30 for the Syndicate (P170) in 1933. Therefore R. P. Gorton must have dealt with two separate lands. P79 of 1934—Hermon's report, who describes Ambulugala as 150 acres planted in 1927 and says that the division was absolutely free of weeds from end to end. This shows that the Syndicate was attending to the estate they were in possession. Report P171 of 20.9.34 by Ditmus in which he says that the estate is clean-weeded and is in plucking. He refers to 150 acres planted in 1927. Letter P82 of 1936 from the Tea Controller refers to acreage in tea as 301. Letter P152 of 12.12.38, reference to acreage in tea 301. P153 of 18.1.39reference to 301 acres in tea. Letter P157 of 3.2.39 from Craib to Bois 40 Bros. Reference to H. W. Gordon, Acting Superintendent of Kempitikanda Estate, about the discrepancy in the acreage of tea and refers to P82 and P153 and that the reports for the last 10 years are Ambulugala 150 acres tea, etc.

It was then H. W. Gordon who took Hermon round to defendant's land on 30.6.38. Gordon could not have shown Kempitikanda as defendant's estate. It is clear that up to 1938, therefore plaintiff was in possession and had planted the 150 acres. P83 of 1.2.42—report by Hermon who had gone round the estate again. It is not correct to say that Hermon checked all the three plans given to him as stated in D12 for 18 acres, 7 acres and 54 acres odd. To D12 is attached an acreage-statement which is marked P154. Hermon states that he checked the first two plans given by the proprietor and found them correct and that as regards the 54 acre block, the proprietor gave a tracing of plan D62 initialled P. F. G., which he states is the actual area in tea. Therefore it is clear that Hermon has not checked it. It is to be noted that it was not Gordon but the proprietor who gave the plan to Hermon.

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Monthly reports P138 to P145 for every month of 1942 and P85 for December, 1942. 1943—Monthly return P86 for December. P87 for December, 1944. P127 to P137 for 1944.

P84 of 8.6.44. Letter by Rodale giving month to month figures of Kempitikanda Estate to Peries who was thinking of buying the estate. It refers to Ambulugala as 150 acres. There is evidence of continuous possession from 1927 to 1944 by documents. There is evidence that the Syndicate have planted and maintained. As against this, the only evidence for the defence is the oral evidence of the 2nd defendant that they planted the land. There is positive evidence in defendant's own book D51
20 that they did not plant the land, and also in the evidence of the 2nd defendant. Page 112 of the evidence; also page 118.

All the entries in D51 refer only to $47\frac{1}{2}$ acres. Page 133 of evidence. The difference strangely is 43 acres because of the 100 acres said to have been possessed by defendants; 10 acres came late, so that the earlier extent is 90. Who then planted the 43 acres? Acreage statement P154 of 1938, attached to D12 supports that the defendants only planted $47\frac{1}{2}$ acres. In 1938 land A18 is shown as 18 acres old tea ; the land of 7 acres which is outside is referred to, balance old tea is referred to as 40 acres. This 40 acre block is made up of small blocks of $2\frac{1}{2}$ acres seed-bearers. 30 At page 108 of the evidence defendant states that 8 acres of land A18 was planted. Therefore about 10 acres must have been not planted. This bears out that they could have planted 49 acres de novo, thereby explaining how D51 refers to $47\frac{1}{2}$ acres as having been planted only. Hence defence has not accounted for the planting of 43 acres. Then where is the land that defendants planted? The answer is to be found at page 108 of the 2nd defendant's evidence in Xn. in chief :--- "Uduwewela Estate consists of Taradenitenna in extent 18 acres, the lands depicted in schedule A....and a land adjoining on the south of it in extent about 45 or 46 acres. There is another block some distance away about 7 acres

40 in extent and the new clearing in extent about 13 acres...." The 45 or 46 acres referred to as on the south is what is referred to in D51. That block of 45 acres and the 2 acres seed-bearers make up the $47\frac{1}{2}$ acres referred to in D51. The 43 acre block could not have been planted by defendant, and there is no evidence to that effect. "Aluthkella" referred to by defendant in the evidence is the 45 acre-block she refers to as being on the south. There is no evidence at all that the 43 acre block has been planted by defendant, but that they only planted the land on the south.

No. 28 Addresses to

Court

-- .Continued.

No. 28 Addresses to Court - Continued. D52 by D. G. Fernando, Notary, to 2nd defendant's father, dated 7.7.28. It refers to the land having been surveyed by Markus, and that the total cleared acreage is 34 acres, including the 29 acre block, the adjoining block and the tea-seed bearers block. That block that is called 11 acres is only 8 acres, namely Koskolawatta depicted in plan D64. Page 136 of the evidence—defendant's evidence in ReXXn. In D51, from July, 1929 at page 47, up to April, 1934, at page 165, there is reference only to a 34 acre block.

(Adjourned for lunch).

Trial resumed

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MR. ADVOCATE PERERA CONTINUES :--- Therefore only about 32 acres planted, as $2\frac{1}{2}$ acres were seed-bearers. On PIOI/DIO of 1933 defendant has claimed tea coupons for $84\frac{1}{2}$ acres, and in PIO2 for about 71 acres. But on Do claim for $86\frac{3}{4}$ acres. There is a difference of 54 acres, for planting which there is no evidence by defence. D51 for period of 1929 to 1934 refers to planting only on 34 acres. Page 109 refers to letter D57 of certain blocks being planted. Page 120 in D58-there is a reference to 29, 8 and 11 acres and that the 11 acre block and the 8 acre block are not in dispute in this case. Page 127. If 11 and 8 acres are planted in 1928, then defendant would have only encroached on 16 acres of 20 plaintiff's land, but D51 refers to planting of 34 acres. The 34 acre block planted by defendant must be outside plaintiff's land. D51 also establishes that there is no planting of any kind done in 1929. Page 134 line 10. Oral evidence of planting only of the 2nd defendant, which is contradicted by herself and by books and documents. D51 refers to another book at its page 279. There account book 2 is referred to after 1940. That is not produced. Page 134 of evidence. Page 108. 55 acres planted extent computed by tea plants, but D51 gives 34 acres planted. If one acre is computed at 4,000 plants, then 47 acres only planted. Vide P171 where Ditmus says that each acre is planted at 4,000 plants. Page 132-30 Only Rs. 52/- spent on actual planting and no other similar entry.

LANDS IN SCHEDULE B—According to plaintiff lands in schedule B are unplanted and when defendant began to plant it plaintiff wrote D3 in 1947. Letter P88. No denial of **opening** in defendant's letters. Page 108 of evidence. Page 103—permit referred to in evidence of that page is not produced. Page 154 of evidence of H. W. Perera contradicts defendant's evidence. Also Frugtniet's report P146. Page 69 of D51—there is an item showing green-peas. Page 102 of D51—Kurakkan. Sowing of green-peas and kurakkan would not give title to the lands in schedule B. P177 conclusively points to the fact that this land was planted in 1927. Page 121 of evidence of defendant. Pages 96 and 97 of evidence. Ratwatte's report (P177) should be accepted.

PII7:—Application for Crown-grant. Lands in PIO8 all in Uduwewela Village, but the plan D62 was for lands in Polwatta Village. The fraud lies in using title on one deed for lands in one village, for lands

in Polwatta village. Defendant's evidence at page 114. "It would be correct to say that the lands dealt with on D29 are not the lands depicted in P148." 55 acres only asked for. Defendant should have asked for 87 acres. Statement in P117 that title is 56 years is incorrect. According to P116 the eastern boundary is Aradhana-Elahena. Page 142 of evidence. D83 is for the laud Aradhana-Elahena, which is the eastern boundary. The application P117 does not refer to Aradhana Elahena. Pages 113 to 116. Whole land not barbed-wired as shown by D62. D29 construed:---"Which abovementioned extent is included in the Uduwewela 10 Estate of 100 acres, bounded on the east by Aradhana Elahena, etc." Same boundaries given in P108. There will be nothing then to rectify if the translation put forward by defence is to be taken, because D29 says that. D30 itself gives the reason for the rectification, viz: that there are lands outside the said boundaries as given in D20. That is why registration of D30 was delayed. 2nd defendant's father and his agent at Kegalla were notaries knowing all questions of registration. It was not registered earlier because the notary did not want the Crown to know that D62 has been made inapplicable. P117 is a piece of fraud. No tablet to D62. Tablet will show details of possession of the blocks.

20 2ND DEFENDANT'S EVIDENCE :- Letters P88 to P100. Defendant has not replied letters of plaintiff about encroachment. Her evidence not frank. Page 112. Page 108 about possession of land. Pages 120 and 124: "....My father was not present on the land nor was Mr. D. G. Fernando present...." Page 128 : "When Mr. Hermon went for inspection to the land, my father was not on the estate. My father may have been on the estate when Mr. Hermon went there." Later she admits that father was present on the land. If father was present he must have suppressed all records, but D12 says that no records were available. Pages 103, 108, 129 of evidence ; page 103 2nd paragraph. Page 108 2nd paragraph ; **30** page 129 : "My mother was in possession of the lands in 1936 although the title deeds in her favour are in 1939 or 1940." Page 132: "The villagers possessed the balance of the lands shown in D62." Pages 120 and 130-defendant tries to make out that D29 covers land in schedule B. "D30 covers the lands in schedule B also." Page 131 :"....Application for 80 acres by father. "Balance was to be found in the lands in schedule B." Page 101: "I went to the land about two months after my father bought it." Page 103: "At the time I went to the land, towards the end of the year, some portions were cleared and some were planted. My father continued to plant and ultimately the whole extent 40 was planted by my father.... All the lands in plan Z are planted in tea...." Page 118—"The whole land must have been planted by 1931 or so."Earlier—"In 1928 and 1929 the whole of the land that my mother possessed, other than the 8 acres....was planted." Page 134: "In D51 there is nothing to show that any planting has been done in 1929 seasons." Page 101 :-- "I went to the land a few months after my father purchased it." Page 135: "I went to the land in plan X only after it was planted. That was about the end of 1930." Page 103-

No. 28 Addresses to Court --Continued. No. 28 Addresses to Court —Continued. "....the whole extent was planted by my father...." Pages 135 and 136:—"The land in plan X had been earlier planted before it was in my father's possession." Page 136: "I am also in possession of some land to the south of plan X—about 13 acres." Page 120—"Today I own about 19 acres in Uduwewela." Page 133: "There is a block to the south of the land in dispute in plan X. It is about 12 acres in extent....there is another block of 11 acres and another block of 8 acres, etc."

These statements prove that D51 deals with 34 acres. Page 102— Planting done through Wereke Unnanse and agents. Page 118 line 5 from bottom :—" My father was a planter. He used to come once a month and do the planting himself." Page 139 last two lines. Planting went on till May, 1934. Defendant's evidence not to be accepted on questions of planting. When did defendant get into possession? P84 of 1924. P124 of 1945. Rodale left Island in 1944. At that time plaintiff negotiating to buy land. At that time defendant and her husband resided in Kegalla. Page 104 of the evidence. It was then that defendant got into possession. P117—pages 98, 103, 111, 112. It is not clear under what Ordinance that settlement is. Defendant has not stated under what Ordinance it is. Steps for settlement must be taken as provided in the Ordinance, but it is not clear under what ordinance the settlement was made. It is a C.Q.P. by which the Crown in effect says that it only binds the Crown and not private parties.

Article 6 of Letters Patent says that Crown lands can only be disposed according to law.

15 N.L.R. 132—Silva vs. Bastian 52 N.L.R.—49—Abeykoon Hamine vs. Appuhamy 4 Leader Law Reports—34—Phillip Silva vs. Ukkurala Hayley on Kandyan Law at page 274 ; 38 N.L.R. 117, at page 123. 5 C.W.R.—46.

Ratwatte's evidence at page 95 regarding surveyor. Section 8 Chapter 390 L.E.

MR. WEERASOORIA refers me to the following authorities :---

21 N.L.R. at page 57-Attorney General vs. Punchirala

24 N.L.R., page 1-Mudalihamy vs. Kirihamy

35 N.L.R., page 417 at pages 434–436–Ceylon Exports vs. Abeysundera.

The rules and regulations referred to in D2 are at page 292 of General Orders. Paragraph 24 of plaint : "Caused serious damage and detriment."...."

Intd. N. S., 40 A. D. J.

Call case for documents with lists on 17.11.52.

Judgment on 20.1.53.

Intd. N. S., Additional District Judge.

6th November, 1952. J.S. 30

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No. 29

JUDGMENT OF THE DISTRICT COURT

N. 29 Judgment of the District Court 31-3-53

D.C. Kegalla No. 6269.

31.3.53

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JUDGMENT

In this action plaintiff sues defendants for declaration of title to the lands described in the schedules A and B of the plaint (referred to as lands AI to AI8 and BI to BI0), or in the alternative for compensation for plantations on AI to AI8, for damages and ejectment. Defendants denied plaintiff's title, claimed the lands on their title and prescription and in the event of plaintiff succeeding in this action ask that they be declared entitled to the plantations, compensation and *Jus Retentionis*.

Lands A1, A2, A4 to A17 are depicted in plan X, land A18 in plan Y, and lands B2 to B7, B9 and B10 in plan Z. Lands B1 and B8 have not been surveyed and B9 not identified.

The case for plaintiff is that she is the owner of the lands in suit on two alternative titles, one on deeds P1 and P2, and the other on deeds P3 to P16, P19, P20 to P70. On deed P2 of 1925 Peiris the plaintiff's husband and two others described as "The Syndicate" purchased the lands and had plan P17 made by Thiedeman who surveyed the lands during 1925-26. The Syndicate owned the Kempitikanda Group of three estates of which the Ambulugala division of 150 acres planted in tea contains the lands in suit, except A18, all of which are situated, A1 to A13 in Polwatte, A14, A18 at Dodantala, A15 to A17 at Uduwewela, B1 to B9 in Polwatte and B10 in Ambulugala. In plan P109 of the district the three villages are situated as follows :---

Ambulugala on the North Uduwewela on the South, and Polwatte in between them.

The lands have been identified in plan P17 by Peiris, by Thiedeman 30 who stated that he made plan P17 after the lands were shown to him by Boyagoda the vendor on P2 or his agents or the Village Headman, and by Frugtniet who made plans X, Y and Z on a commission from Court and also identified the lands at the survey in relation to plan P17 and plan P147 which is defendants' title plan, and also produced plan Z1 in which P17 is superimposed on plan X.

In 1927 while lands BI to BIO remained unplanted, lands AI to AI8 were planted in tea for the syndicate by their agents Lewis Brown & Co. who sent letter P72 of 1929 and accounts P73 about the clearing and planting of 150 acres of Ambulugala. In 1931 A. P. Craib one of the 40 Syndicate proposed by letter P74 of 1931 to float a company and got prospectus P75 prepared by the Syndicate's agents Bois Bros. A. P. Craib from 1932 to 1933 and H. C. Rodale from 1933 to 1946 were overlooking the estate. Bois Bros. as agents of the Syndicate No. 29 Judgment of the District Court 31.3.53 —Continued.

managed the estate from 1931 to 1946 and dealt with all matters referred to in the documents produced by witness Montgomery of Bois Bros., and in which Ambulugala is described as 150 acres in tea. In 1934 Hermon visited the estate for valuation and made report P79 stating that Ambulugala was 150 acres in tea planted in 1927. In 1936 another valuation report P164 giving a similar acreage was made by Fellowes. In 1942 plaintiff was a co-owner of the estate and wanted to acquire the other shares and had another report P83 made by Hermon who visited the estate, was shown round by Rodale the Superintindent, and found the estate to be 150 acres in tea planted in 1927. Peiris has stated that his agents had possessed the lands in suit from 1931 to 1945 and that in 1947 when he found that defendants were in possession of 43 acres of Ambulugala he had correspondence P89 to P100 with 2nd defendant from 2.8.47 to 18.2.48 before this action was filed.

Defendants claim :

- (A) Lands AI to AI7 shown in plan X in extent A28-R3-P35;
 - (I) on Crown grant D17 of 1930 and plans D17a to D17d;
 - (2) as the land Aradhana Elahena shown in plan D32 on deeds D33 to D39 and Decree D40; and
 - (3) as the land shown in plan D71 in extent A2-Ro-P2.
- (B) Land A18 as Taradenitennehena shown in plans D7 and D53 on deeds D18 to D30—in extent A18—R1—P14; and
- (C) Lands B2 to B10 on deeds D41 to D46 and D75 to D81—in extent A13—R1—P32 without producing any plan.

Crown Grant D17 is based on Boyagoda's title on deed P108 which passed to 1st defendant on documents P109 to P116. The land conveyed on P116 of 18.1.28 to 1st defendant is Uduwewela Estate in extent $A85-R2-P11\frac{1}{2}$ according to plan P148 and situated at Uduwewela Village. On 8.2.28 1st defendant's vendors on P116 executed a deed of rectification P119-which was not registered till 13.7.37, to correct the boundaries given in P116 as :

"through an inadvertence boundaries in a plan have been mentioned and as lands belonging to the said Uduwewela Estate are outside the said boundaries...."

On 26.1.29 Ist defendant made application PI17 for a "Settlement of claim to land" of Uduwewela Estate for an extent of 55 acres, describing the land as situated in the villages of Dodantale, Uduwewela and Polwatte reciting title on PI16 and without disclosing plan PI48 and PI19. The application was referred to Ratwatte, Chief Headman. His evidence at pages 95 to 98 shows that he made two reports P177 on 18.2.29 and D14 of 3.12.29 containing conflicting statements about plantations and extent so that Ratwatte had to admit that:

"the blocks referred to in P177 are not the same as the blocks referred to in D14." 20

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No. 29 Judgment of the District Court **31.3.53** --Continued.

By deed D31 of 1936 1st defendant conveyed one half share to her daughter the 2nd defendant who claimed for her one half share lands AI to A18 shown in plans X and Y and lands BI to BIO shown in plan Z for the one half share of the Ist defendant. Evidence of the 2nd defendant is that she knew the lands from 1928, that lands AI to A18 were planted in tea by her father during 1928 to 1929 when witness Juwanis was put in charge of the estate, that the lands in plan Z were planted between 1939 to 1946 and that plaintiff had no possession. She produced account book D51 kept by her of monies spent on these lands during 1928 to 1940, and letters D54 to D58 dealing with the estate management. According to her Uduwewela Estate consists of 5 blocks of land in extent 84 acres (page 108 of evidence). Her evidence is supported by that of Juwanis who was on the estate from 1929 and by documents D54 to D56, D69, D70 and D84 to D90 dealing with estate management from 1928 to 1948.

The defence contended that plaintiff's case was weak on the following points :---

- (1) that a mere mention in plaintiff's documents dealing with estate management that Ambulugala was in extent 150 acres in tea does not prove that there was in point of fact such extent;
- (2) that plaintiff's title deeds have not been proved to apply to the lands claimed, as no vendors on the deeds or owners of adjacent lands have given evidence for plaintiff;
- (3) that there is no proof that the lands surveyed come within the description of the lands described in the plaint;
- (4) that plan P17 is at the best a mere sketch and not a plan made after a proper survey with verified boundaries;
- (5) that Crown grant D17 cannot be challenged; and
- (6) that defendants are in possession of lands in plans X and Y for over 20 years.

It is to be noted that plaintiff's title is not challenged. For evidence of possession it will be seen that both parties rely on documents relating to estate management. The documents produced by plaintiff cover the period from 1928 to 1948 and have been kept by Lewis Brown & Co. or Bois Bros. who were the managing agents of the Kempitikanda Group of which the Ambulugala division of 150 acres in tea containing the lands in suit formed a part. Some of these documents are returns furnished to the Tea Control Department during the control years when the actual acreage in tea and the quantity of tea leaf plucked had to be given. Reports P79 of 1934 and P83 of 1942 by Hermon and P164 of 1936 by Fellowes were made after the two valuers visited the estate, were shown round by the superintendent who overlooked the estates before the reports were made. There is no reason therefore to think that all these documents are not a truthful record of what they contain and that they contain entries that are false or fraudulent.

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No. 29 Judgment of the District Court 3^{I.3.53} —Continued. The contention that plaintiff's title deeds have not been proved to apply to the lands claimed is best refuted by the evidence of Peiris at pages 34 and 36 to 38 on the identity of the various lands as shown in plan P17, by the evidence of Thiedeman who made plan P17, at pages 55 to 60 in which he has stated that the lands were **shown** to him by Boyagoda or his agents or the Village Headman and that :

"the representatives of Boyagoda gave me the names of lands and their ownership."

and by the evidence of Frugtniet at pages 61 and 64 to 68 in which he has stated that he had identified the lots in schedule A of the plaint on the ground with regard to plans P17 and P147. T.P. The evidence of Frugtniet has conclusively shown that the lands surveyed by him are the lands described in the schedule to the plaint. There is also no doubt from the evidence of Thiedeman that plan P17 is not a mere sketch but a plan made after a proper survey during which the boundaries and the names of lands were given by Boyagoda the vendor to the plaintiff.

It will be seen from the evidence of Ratwatte, the 2nd defendant and documents P108 to P119 that Crown Grant D17 has been obtained without the true facts being set out in the application P117 and that the two reports made by Ratwatte on the lands applied for are conflicting and 20 inapplicable to the same land, although strangely enough, on such material the Crown Grant was issued. The source of 1st defendant's title on deed P116 of 1928 is deed P108 of 1920 by Boyagoda and all the lands dealt in P108 are in the village of Uduwewela except one land (No. 11) which is in Polwatte. Most of the lands in schedule A, it will be noticed, are in Polwatta. What is conveyed to the 1st defendant as Uduwewela Estate was land situated in Uduwewela Village. 2nd defendant's own evidence at page 114 is:

"Looking at PI48 the greater portion of lands depicted therein is in Polwatta village,....It would be correct to say 30 that the lands dealt with in D29 are not the lands depicted in PI48."

2nd defendant's evidence at pages 114 to 116 clearly shows that the Crown Grant had been obtained by 1st defendant by making use of title deed P116 which deals with lands in Uduwewela Village for obtaining a Grant for lands in Polwatta Village. There are far too many irregularities to be found in the history of the Crown Grant that militate against holding that the Crown Grant applies to lands A1 to A17. If then the Crown Grant does not apply to the lands A1 to A17 it is necessary to ascertain from the evidence what the actual lands were, that were possessed by the defendants.

While the plaintiff claims that she and her predecessors have been in possession of an extent of 150 acres of tea from 1928, the defendants claim that they had been in possession of 100 acres which had been reduced by the effect of the decree in two cases. From 1928 defendants' title is to an extent of 90 acres. Plan P124 of 1945 made during the time that negotiations were made by plaintiff for purchase of the lands from the Syndicate, shows an extent of 107 acres being possessed by the syndicate. At page 34 of the evidence Peiris has stated that it does not cover any portion of land in suit which is an extent of 43 acres. Now the lands depicted in plans X Y and Z are in extent 43 acres which were in full bearing in 1942 according to Peiris and for which the syndicate had obtained coupons. At page 53 of the evidence Peiris states :

No. 29 Judgment of the District Court 31.3.53 --Continued.

"I am in possession of 72 acres of that land. Ferdinando is in possession of 35 acres and defendant is in possession of 43 acres."

It will be seen that all the entries in defendant's account book D51 refer to an extent of only $47\frac{1}{2}$ acres (page 133 of evidence), and do not cover the planting of an extent of 43 acres, which is the extent that Peiris states is **possessed** by defendants. Acreage statement P154 of 1938 attached to D12 supports the fact that defendants planted only $47\frac{1}{2}$ acres. At page 108 of evidence 2nd defendant states :—

"Uduwewela Estate consists of Taradenitenne in extent 18 acres, the lands described in schedule A, a land adjoining and on the South of it in extent about 45 or 46 acres and the new clearing 13 acres."

It is obvious then that the entries in account book D51 must apply to the 45 or 46 acres stated by the 2nd defendant to be on the South. Therefore the 43 acre block could not have been planted or possessed by the defendants as claimed by them on D51. In this connection it may be noted that in D51 the entries from July, 1929 to April, 1934 refer to the planting of a 34 acre block only.

According to Peiris lands BI to BIO shown in plan Z were not planted till 1947 when the 2nd defendant began to plant. 2nd defendant in her evidence at page 103 has stated that of the lands in plan Z two-thirds were cleared by her father in 1939 and the one-third by her in 1945 or 1946, and that in 1938 her father obtained a permit for planting that
30 extent. This permit has not been produced in evidence and no accounts have been produced by the defence as applying to the clearing and planting of these lands. The evidence of Juwanis about possession at pages 146 to 148 is weak and unconvincing : He says,

"I know the lands but not the boundaries. I cannot say how many acres there were in the estate. I took charge I cannot say what extent was planted when I took over in 1930."

Witness N. W. Perera in his evidence at page 150 stated that apart from Taradenitenne there was a block of land on the West possessed by the defendants in extent of about 49 to 50 acres, but at page 153 of his evidence he states that he is unable to say the extent of the 3 blocks referred to in his letter D3 to 2nd defendant, and whether they were planted or not. An examination of the 2nd defendant's evidence on the question of possession clearly shows that the defendants did not possess or plant lands AI to AI8 and that their possession of some of the lands in schedule B began only in 1947.

No. 29 Judgment of the District Court 31.3.53 —Continued. Reference has already been made to the history of the Crown Grant D17 and the facts that vitiate it. The defendants are therefore left with what can be described as "Village title." About deeds P108 to P116—D29 dealing with Uduwewela Estate of 100 acres situated in Uduwewela, 2nd defendant in her evidence at page 114 states :

"Looking at plan P148, the greater portion of the lands shown is in Polwatta Village. It would be correct to say that lands in D29 are not the lands depicted in P148....I cannot say whether our vendor gave the rectification deed D30 because of the discrepancy."

Then at page 115:

"I admit that the title of my mother on D29 and D30 is to the lands I to 26 in P108. I do not know the boundary between Uduwewela and Polwatte Villages....In P117 it is stated that title is on D29 and earlier deeds dating back to 1873 but I have not been able to trace the title back to 1873."

At page 116 :

"The greater part, if not the entirety of the lands shown in P117 would be in Polwatta. I cannot explain how lands in Polwatte Village were claimed on title to lands in Uduwewela 20 Village."

2ND DEFENDANT has also admitted at page 142 that she has no deeds for lands A4, A5 and A6 and at para. 26 of her answer that she is not in possession of lands A2 and A7. For lands B1 to B10 2nd defendant produced certain deeds but could not apply them to those lands: Pages 126 and 127 of evidence :

"I did not make any attempt to identify any one of these lands on the ground by boundaries."

Her deeds for "B" lands are of the years of 1939 or 1940.

At page III of her evidence she says :

"I do not claim any of the lands in plan Z." The 1st defendant who is stated by the 2nd defendant to be in possession of the lands shown in plan Z has not given evidence in the case.

For land A18 deeds P48 of 1867 and P49 were produced by plaintiff, and deeds D18 of 1888 and D19 of 1898 by the defence. Plaintiff's title deed P48 of 1867 is a transfer by G. L. Kumarihamy of an undivided half share of land A18 in extent 2 amunams, that is about 10 acres. It is this title that has passed in Boyagoda. On the same date as P48 the vendor on P48 executed deed P49 for the other half share in favour of one Loku Banda. Defendants therefore can only claim title on P49 but the defendants' title deed D18 is dated 1888 and must therefore deal with the other half share dealt with on P49. D18 is a transfer by Loku Banda by inheritance by his mother Loku Kumarihamy who however disposed of the entirety of her interests on deeds P48 and P49.

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Somananda the vendee on D18, not content with D18 gets another deed D19 of 1898 in his favour for the same land from one Loku Banda. The evidence of the 2nd defendant at page 124 shows that she has failed to prove even "village title " for land A18:

No. 29 Judgment of the District Court 31.3.53 —Continued.

At page 124 :

"If the said Loku Kumarihamy had dealt with the entirety of the land by P48 and P49 there would be nothing left for her son to convey on D18."

The evidence and the documents in the case clearly establish that the plaintiff has proved title and possession from 1928 till she was ousted from the lands in suit and has identified the lands in suit, and that the defence has failed on all these points. Questions of prior registration do not arise as the deeds produced by the parties do not refer or apply to the same lands.

According to the evidence, Rodale, Superintendent of Kempitikanda Group left Ceylon in 1944 and at that time the 2nd defendant who was living in Kegalla took possession of the lands AI to AI8.

Plaintiff claims damages in a sum of Rs. 11,739/- up to date of action and continuing damages at Rs. 5,869/- per annum till possession is
20 restored. No evidence has been led by the defence that this claim is excessive.

Accordingly I answer the issues as follows :----

(I) Yes

(2) Yes

- (3) In favour of the plaintiff
- (4) Yes
- (5) Yes
- (6) Yes
- (7) As prayed for
- (8) Yes, but only the 1st defendant
- (q) Yes
- (10) to (18) No.
- (19) & (20) Do not arise
- (21) to (24) Yes.
- (25) to (45) In view of my answering issues I to 24, it is, in my view, not necessary to answer issues 25 to 45.

In the result I enter judgment for plaintiff as prayed for with costs and dismiss the defendants' claim to the plantations to compensation and to Jus Retentionis.

> Sgd. N. SIVAGNANASUNDRAM, A. D. J., Kegalla, 31.3.53.

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No. 30 Decree of the District Court 31.3.53

No. 30

DECREE OF THE DISTRICT COURT

DECREE

THE DISTRICT COURT OF KEGALLA. IN

No. 6269. Nature : Rei Vindicatio. Value : Rs. 50,830'00. Stamps : Rs. 25'50.

Mrs.	CECIL	Y H	ARRIET	MATILDA	PERIES,	presently o	f
Ca	mpbell	place,	Colombo	10	•••••	Plaintiff	^c . 10

Vs.

- MRS. CHARLOTTE MARY CLARA FERNANDO of "Credon", т 18. Castle Street, Colombo 8
- MRS. REINEE MARY PHYLLIS PERERA, wife of Dr. A. F. S. 2. Perera, lately in England, presently also of "Credon", 18, Castle Street. Colombo......Defendants.

This action coming on for final disposal before N. Sivagnanasundram, Esquire, District Judge of Kegalla on the 17th day of July, 1951 and August 20th, 21st and 24th of 1951, and 1st day of September, 1951 and 23rd November, 1951 and 14th December, 1951 and 31st January, 1952 20 and 19th February, 1952 and 17th March, 1952 and 14th July, 1952 and August 18th, 19th and 20th of 1952 and September 8th and 24th of 1952 and November 3rd, 4th, 5th and 6th of 1952 respectively in the presence of Mr. Advocate Cyril E. S. Perera appearing with Mr. Advocate Winston Wickremasinghe and of Mr. Advocate A. H. E. Molamure instructed by Mr. L. A. Goonewardane, Proctor on behalf of the plaintiff and of Mr. Advocate N. E. Weerasooriya, Q.C., appearing with Mr. Advocate C. R. Gunaratne and of Mr. Advocate R. F. Perera and of Mr. Advocate Wanasundera instructed by Mr. J. Herbert Fernando, Proctor on behalf of the defendants.

And judgment having been reserved for the 20th day of January, 1953 and further reserved for the 31st day of March, 1953 and judgment having been delivered on the said 31st day of March, 1953: It is hereby ordered and decreed that the plaintiff be and she is hereby declared entitled to the lands and premises described in the schedules "A" and " B " hereto.

And it is hereby further ordered and decreed that the defendants do pay to the plaintiff the sum of Rs. 11,739/- up to date of action to wit 16th August, 1949 with further damages at Rs. 5,869/- per annum from 16th August, 1949 until plaintiff is restored to and placed and 40 quieted in possession of the said premises in the schedules "A" and "B" hereto.

And it is further ordered and decreed that the defendants be ejected from the said premises in the schedules A and B hereto and the plaintiff be placed and quieted in possession thereto. And it is further ordered and decreed that the defendant's claim to the plantations, compensation and to a *Jus Retentionis* is hereby dismissed.

And it is further ordered and decreed that the defendants do pay to the plaintiff her costs of suit as taxed by the Officer of Court.

SCHEDULE "A"

I. All that land called "Udakeyedeniye Hena" in extent three
 pelas of paddy sowing situated at Polwatta in Egodapotha Pattu of Galboda Korale in the District of Kegalla, Sabaragamuwa Province and bounded on the East by the limit of the Hena belonging to Bamunusinghe Mudiyanse people and the limit of Aluboattehena, South by the Village limit of Uduwewela, West by the limit of Bakmeangehena and Purana belonging to Bamunusinghe Mudiyanse people and kawegehena and Bamunusinghe Mudiyanselage hena and registered in C.223/77.

All that land called Timbiligahawatta situated at Polwatta aforesaid and bounded on the East by Ivura, South by Hena of Ukku banda, West by Galenda and North by Mala Ela containing in extent two and a half acres and registered in C.223/78.

3. Undivided 3/24 share of Medawatta in extent about thirty acres situated at Polwatta aforesaid and bounded on the North by Sidalampandeniye kumbura, Ela Heenwellage kumbura and Agala, East by Kundamagewattewela and Agala, South by Agala and Crown land and West by Yonpalliyetenne Agala and registered in C.223/81.

4. All that land called Batapandure Hena in extent two pelas of paddy sowing situated at Polwatta aforesaid and bounded on the East and South by the limit of Pallewalawwehena, West by the Village limit of Uduwewela and North by the limit of the Hena of Dingiriappuhamy and registered in C.223/85.

5. All that land called Gallenamulahena in extent three pelas of paddy sowing situated at Polwatta aforesaid and bounded on the East by Galenda, South by the limit of Iddawalagehena, West by Wela and North by the limit of the Hena of Dingiriappuhamy and registered in C.223/86.

6. All that land called Dangollehena in extent two pelas of paddy sowing situated at Polwatta aforesaid and bounded on the East by the limit of Iddawalage Hena and by Pallewalawwehena, South by Bata40 pandure Hena, West by endaru-fence of the garden of Kiri Banda and North by Agala and registered in C.223/87.

7. All that land called Tembiligahawatta *alias* Etinnamalehena in extent two pelas and five lahas of paddy sowing situated at Polwatta aforesaid and bounded on the East by the limit of Tembiligahawatte hena

No. 30 Decree of the District Court 31.3.53 —Continued. No. 30 Decree of the District Court 31.3.53 —Continued. of Dingiri Amma, South by Hapugahamulahena, West by galenda and North by the limit of the hena of Dingiriappuhamy and by fixed stones and registered in C.223/88.

8. Undivided 1/4th share of Palletennehena *alias* Alubowatta hena in extent one amunam of paddy sowing situated at Polwatta aforesaid and bounded on the East by the Agala of the Garden belonging to Bamunusinghe Mudiyanselage Appuhamy, South by the village limit of Uduwewela, West by the Agala of the garden belonging to Udawatte Arachchila and North by the Agala of Hanakirigala Palletennehena, and registered in C.223/89.

9. An undivided 1/4th share of Bakmiangehena and Purana in extent one amunam of paddy sowing situated at Polwatta aforesaid and bounded on the East by the limit of the hena belonging to Neelakanni Mudiyanselage Hendrick Appu, South by the limit of the Hena belonging to the Crown, West by the limit of field belonging to the said Hendrick Appu and Iura of the field belonging to the Vihare and North by the limit of Wallubuluwehana belonging to Bamunusinghe Mudiyanselage Appuhamy and Punchirala and registered in C.223/90.

10. Undivided 1/4th share of Yonapalliyehana in extent one amunam of paddy sowing situated at Polwatta aforesaid and bounded on the East by the limit of Narangahamulahena, South by the limit of Waulubuluwehena, West by the limit of Pallewalawwehene and the limit of Karakehena and on the North by the limit Bulugahamulahena and Talabotuwe and endaru fence and registered in C.223/91.

11. Undivided half share of Ethilimalehena in extent twelve lahas of paddy sowing situated at Polwatta aforesaid and bounded on the North by the limit of Iddawalage hena, East and West by Rubber Estate and South by Batapandurehena of T. B. Boyagoda and registered in C.223/05.

12. All that land called Batapandure hena now Watta in extent five pelas paddy sowing situated at Polwatta aforesaid and bounded on the East by the limit of Heenwellagehena and Mudunapitagala, South by the limit of Mahawalawwa, West by the limit of Siyambalapitiyehena and the limit of Iddawalagehena and North by stones fixed on the limit of Iddawalagehena and registered in C.223/98.

13. All that land called Dangahayatamade hena *alias* Batapandure hena situated at Polwatta aforesaid and bounded on the North by the limit of Iddawalagehena and the limit of Heenwellage hena and Galenda, South by the limit of ditch of Tewatta and West by the village limit of Uduwewala and the limit of Siyambalapitiye hena containing in extent two amunams of paddy sowing and registered in C.223/166.

14. All that high and low land called Aradanaelehena and the adjoining field of the aggregate extent of three pelas of paddy sowing situated at Dodantale in Egodapotha Pattu aforesaid and bounded on the North by Gansabawa Road on the limit of Aradanaelehena, East by the

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No. 30 Decree of the District Court 31.3.53 —Continued.

Horanekarayage Kumbura, South by Tewatta Ela and West by the limit of the hena belonging to Moor people and the village limit of Uduwewela and registered in C.223/167.

15. All that allotment of land called Imbulange Udugehena *alias* Dangollehena situated at Uduwewela in Egodapotha Pattu aforesaid and bounded on the South by land claimed by natives and Crown land and on all other sides by land claimed by natives containing in extent one acre one rood and twenty eight perches and registered in C.223/168.

16. All that allotment of land called Dangolleminiranwalehena
10 situated at Uduwewela aforesaid and bounded on the North by Polwatta Village boundary, East by Dodantale village boundary, South by Bandara Hena claimed by D. A. David, West by Dangollehena claimed by E. Setuwa and others and North-west by Ethinimale hena claimed by F. Ranmenika and others containing in extent four acres two roods and eleven perches and registered in C.223/169.

17. An undivided half share of Tennapita hena situated at Uduwewela in Egodapotha Pattu aforesaid and bounded on the North by limit of Edirisinpedigehena, East by Walawwehena, South by Hapugahadole hena and West by Bandarahena containing in extent three pelas of paddy sowing and registered in C.223/164.

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Which said abovementioned lands (except land No. 3) are defined and depicted in plan No. 1078/1950 dated March, 1950 made by A. J. Frugtniet, Licensed Surveyor, Kegalla marked "X" and filed of record in this case and therein described as " certain allotments of land situated in the villages Uduwewela, Dodantale and Polwatta in Egodapotha Pattuwa, Galboda Korale, Kegalla District, bounded on the East by Horanekarayalage kumbura of the Trustees of Dodantale Pansala, Leukka Tea Estate Dodantale Village Leukka Tea Estate, North by Heenawalagehena watta and Imbulange watta of James Foot-Path Polwatta village Dangollewatta, Yonpalliyawatta of Punchi Banda and 30 Ehetuwahena alias Yonpalliyawatta of Wattuwa and others, West by Yonpalliyawatta of Podimenika Buluwamulawatta of Mudalihamy and others Purane Kumbura of Punchi Banda, Purunehenewatta of Punchi Banda Bakmeeangehenewatta of Martinahami and Kotapolayakumbura of Siripina Veda and others and on the South by Udagiriyakumbura alias Kandekumbura of Pincha and others, Land in Title Plan No.405308. The tea garden belonging to defendants the land in title Plan No. 269541 Dangolleminiranhenewatta of Kiri Ukkuwa and Polkotuwewatta of Siripina Veda depicted in Preliminary Plan No. 3994/9 and containing 40 in extent thirty two acres and twenty five perches (32A. oR. 25P).

18. All that land called Taradenitennehena situated at Dodantale in Egodapotha Pattu aforesaid and bounded on the North and West by the limit of Udawalawwehena, East by the limit of Udawalawwehena and South by the limit of Leukewalawwehena containing in extent two amunams of paddy sowing and registered in C.223/163. No. 30 Decree of the District Court 3^{1.3.53} —Continued.

Which said land numbered 18 above is defined and depicted in plan No. 1077/1950 dated 22nd Febuuary, 1950 made by the said Mr. A. J. Frugtniet, Licensed Surveyor and marked "Y" and filed of record in this case and is therein described as an allotment of land called Taradenitenna hena, now a Tea Garden, situated in Dodantale Village, Egodapotha Pattuwa Galboda Korale, Kegalla District and bounded on the North by Laukka Estate, East by Laukka Estate, Viyanewatta and Pansala Kumbura, South by Dodantale Estate and Horanakumbura and on the West by Laukka Estate and containing in extent eighteen acres one rood and fourteen perches (18A. 1R. 14P.)

Which said allotments of lands numbered I to I4 above are identified and consist more or less of lots 97/100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113 and 114 in the Survey Plan of Utuwankanda Estate No. 1304 made by Messrs. Ben J. Thiedeman & Co., Licensed Surveyor, and now form one property.

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SCHEDULE "B" REFERRED TO:

1. All that land called Sidaranpandeniye Egodahena in extent six lahas paddy sowing situated at Polwatta aforesaid and bounded on the East by a straight line from Ravaliela Pandura up to Maha Bulu tree of the remaining portion of the same land belonging to Ukkumenika, 20 South by Deniya, West by stone fixed for making the limit of Appuralagehena and North by the limit of the forest transformed into a Mukalana and registered in C.223/79.

2. All that land called Bulane hena in extent two pelas of paddy sowing situated at Polwatta aforesaid and bounded on the East by Endaru fence of Totupoladeniya South and West by the limit of the hena of Siyambalapitiye Korale and North by Pallewalawwehena and registered in C.223/80.

3. Undivided 3/6 share of Totapoladeniya Hena in extent one amunam of paddy sowing situated at Polwatta aforesaid and bounded 30 on the East by the limit of Iddawalagehena, South by Crown land, West by limit of Ganime hena and North by Daulkarayalage hena and registered C.223/83.

4. Undivided 3/6th share of Ganime hena in extent two pelas of paddy sowing situated at Polwatta aforesaid and bounded on the East by the limit of the Hena of Dingiri Amma, West by the village limit of Ambulugala and North by the limit of Mukalana and registered in C.223/84.

5. An undivided half share of Indigollehena in extent eighteen lahas paddy sowing situated at Polwatta aforesaid and bounded on the North by the limit of the hena of Siyambalapitiya Korale, East by 40 Egodawatte Agala and Endaru fence, South by the limit of Udage hena and West by the limit of the hena of Pallewalawwe and registered in C.223/92. 6. All that land called Totapoladeniya *alias* Bulanehena extent about one pela of paddy sowing situated at Polwatta aforesaid and bounded on the north by Ela, East by Totapoladeniya *alias* Ela, South by Siyambalapitiyehena and Nekathige Hena and West by Siyambalapitiye hena *alias* Bulane hena nnd registered in C.223/96.

7. Undivided half share of Bulanagawa Mukalana in extent one acre two roods and sixteen perches situated at Polwatta aforesaid and bounded on the North by Bulane Ela, East by Indigollehena claimed by Dingirihamy, South by Bulanehena claimed by Dingirihamy and West by land appearing in plan No. 67610 and registered in C.223/07.

8. Undivided 1/3 share of Pallepitiya Kumbura in extent two pelas paddy sowing situated at Polwatta aforesaid and bounded on the East by the limit of Ukku Banda's hena, South by Weleweta and limitary posts, West by limitary posts and stone fence and North by limit of Arambedeniya and registered in C.223/134.

9. All that land called Sidalampadeniye watta situated at Polwatta aforesaid and bounded on the North by the limit of Sidalampadeniya belonging to Appusingho, East by the limit of the garden of Appusingho, South by the ditch of Tel-ehetuwamula hena belonging to Bamunusinghe
 20 Mudiyanselage people and West by the Ditch of Heenwellage hena containing in extent twelve lahas of paddy sowing and registered in C.223/163.

10. All that land called Bulane hena situated at Ambulugala in Egodapotha Pattu aforesaid and bounded on the North by Mala Ela, South by the limit of Waharaggodage hena and West by the limit of Gamage hena, East by the Village limit of Dehimaduwa containing in extent fifteen lahas of paddy sowing and registered in C.223/106.

Which said abovementioned lands (except lands Nos. 1 and 8) are defined and depicted as lots A and B in Plan No. 1079/1950 dated 6th March, 1950 made by the said A. J. Frugtniet, Licensed Surveyor and marked "Z" and filed of record in this case and is therein described as 30 Certain Allotments of land situated in Polwatta and Ambulugala Village in Egodapotha Pattuwa, Galboda Korale, Kegalla District and bounded on the North by Ela, East by Totapoladeniyekumbura, Totapoladeniyewatta, V. C. Road, Indegollehenawatta *alias* Udupihelawatta, South by Indegollehenawatta alias Udupihelawatta Siddalampadeniye Kumbura, Sidalampadeniyehena alias Makulgahatennehena, Makulgahatennewatta and Ganimehenawatta and on the West by Miriswatta Bulanamillagahamulawatta and Bulana Henawatta Bulanahenawatta and which said lots A and B contain in extent Thirteen Acres One rood and Thirty two 40 perches (13A.1R.32P.)

Sgd. E. A. V. DE SILVA, District Judge.

Kegalla, 14th May, 1954.

Drawn by me :

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Sgd. L. A. GOONEWARDANE,

Proctor for plaintiff.

No. 30 Decree of the District Court 31.3.53 --Continued.

No. 31

PETITION OF APPEAL OF THE DEFENDANTS TO THE SUPREME COURT

Appeal of the Defendants to the Supreme Court 1.4.53

No. 31

Petition of

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

D.C. Kegalla Case No. 6269.

(Filed today. Sgd. D. B. SENEVIRATNE, Secy. 1.4.53).

MRS. C. H. M. PEIRIS of Campbell Place, Colombo 10....Plaintiff. Vs.

I. MRS. C. M. CLARA FERNANDO of Colombo 8

2. MRS. REINEE MARY PHILLIS PERERA, wife of Dr. A. F. S. Perera of Colombo......Defendants.

I. MRS. C. M. CLARA FERNANDO of Colombo 8

2. MRS. REINEE M. P. PERERA, wife of Dr. A. F. S. Perera of Colombo 8......Defendants-Appellants.

Vs.

MRS. C. H. M. PEIRIS of Colombo 10..... Plaintiff-Respondent.

To His Lordship the Chief Justice and the other Justices of the Honourable the Supreme Court.

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This 1st day of April, 1953.

The petition of appeal of defendants-appellants abovenamed appearing by James Herbert Fernando, their Proctor, state as follows :---

1. The plaintiff respondent sued 1st and 2nd defendants-appellants for declaration of title to the lands described in schedules A and B of the plaint, for damages and for costs.

The plaintiff respondent claims title to the aforesaid lands by succession to T. B. and H. W. Boyagoda who plaintiff pleaded were at one time entitled to the said lands and whose title plaintiff contended 30 passed to Palaniappa Chettiar and Caruppen Chettiar and thence by a number of deeds came down to plaintiff in the year 1946.

3. Plaintiff complained that appellants are in the wrongful and unlawful possession of the premises in schedule A ever since her purchase in 1946 and of the premises in schedule B from 1947.

191

4. Plaintiff be it noted averred no ouster and it is submitted failed to prove any though the Learned Judge has held that the plaintiff was ousted from the lands in suit.

No. 31 Petition of Appeal of the Defendants to the Supreme Court 1-4-53 - Continued.

5. Plaintiff sought to identify the lands Nos. 1-17 in schedule A as falling within Plan X filed of record, land No. 18 in schedule A as represented by Plan Y and the lands in schedule B as falling within Plan Z.

6. The learned Judge has held that lands A1, A2, A4 to A17 are depicted in Plan X. A18 in Plan Y and B2-B7, B9 and B10 in plan Z, lands B1 and B8 have not been surveyed and B9 not identified but the learned Judge has awarded judgment for plaintiff as prayed for.

7. Appellants denied the title set out by plaintiff respondent and that the title of the Boyagodas if any passed to plaintiff on the documents pleaded and claimed title to the lands depicted in plan X by virtue of a Grant by the Crown dated the 7th day of August, 1930 and by virtue of succession to one Erawpola Lokukumarihamy.

8. Appellants claimed title to the land called Taradenitenna described as land No. A18 in the proceedings and depicted in Plan Y by succession to one Somananda Thero.

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9. Appellants also set up title to the lands depicted in plan Z.

10. Appellants claimed to have made all the plantations on all the lands depicted in the said three plans, to have been in possession of the same for a long period of years and to have thereby acquired a title by prescription thereto and appellants in the alternative claimed compensation for the said improvements and the *Jus Retentionis*.

11. Appellants further denied that the lands claimed by plaintiff fell within Plans X and Z.

12. In an amended plaint plaintiff claimed compensation for plantations.

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13. Plaintiff valued the subject matter at Rs. 39,100.00.

14. The case was tried over a number of days and judgment was reserved in November, 1952 for the 20th day of January, 1953 but judgment was in fact delivered on the 31st day of March, 1953 declaring plaintiff entitled to judgment as prayed for with costs and with damages at Rs. 11,739.00 up to date of action and Rs. 5,869.00 per annum thereafter.

15. Being dissatisfied with the said judgment and Decree appellants beg to appeal therefrom to Your Lordships' Court for the following among other grounds that may be urged by Counsel on their behalf at the hearing of this appeal.

(a) The said judgment is contrary to law and against the weight of evidence.

No. 31 Petition of Appeal of the Defendants to the Supreme Court 1.4.53 —Continued.

(b) Appellants proved that at all material times the lands depicted in Plan X was the property of the Crown being chena lands in the Kandyan Provinces and the Crown Grant produced by appeallants in favour of the 1st defendant appellant must be held to convey the title to 1st defendant appellant. The Title Plans attached to the said Grant have been located by the Commissioner as falling within Plan X and that embraces most of the land in the said Plan the rest of which is covered by a Title Plan in favour of one Sendiya and a land which at one time belonged to one Erewpola Kumarihamy and subsequently planted and successfully litigated for by 1st defendant-appellant.

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(c) Plaintiff attempted to detract from the effect of the said Crown title by averring fraud on the part of the 1st defendant appellant but it is respectfully submitted that fraud was not established and that even in the light of the facts found by the learned Judge title did pass on the Crown Grant to 1st defendant. If the title was in the Crown, the title was not in the Boyagodas and the Grant was effective in law in all circumstances to convey that title to appellants.

(d) The Learned Judge it is submitted fell into a profound error in holding that the Crown Grant does not apply to the lands in suit.

(e) The Learned Judge it is further submitted has been influenced 20 in his finding as regards the applicability and the validity of the Crown Grant by a misdirection namely that witness Ratwatta stated that his report did not apply to the lands in respect of which the Crown Grant issued but the evidence of Ratwatte is that the report he submitted has reference to the said corpus.

(f) Appellants submitted overwhelming evidence that appellants were in possession at the time of issue of the Crown Grant, had planted the lands in plan X and had possession continually from that time until the date of action. The evidence of Mr. Hermon which the Learned Judge accepts proves appellant's case as also the Preliminary Plan and *Gazette* 30 notifications, the report of Ratwatta, R.M., Preliminary Plan even showing that the land was wire fenced as one entity at the time.

(g) Appellants had surveyed the land in plan V soon after their purchase and had ample evidence of possession thereof and of having planted the same and it is strange that although plaintiff's husband who testified on behalf of plaintiff admitted in evidence that appellants have title to a 1/2 share thereof the Learned Judge awards the entirety to plaintiff.

(h) The Learned Judge has misinterpreted the effect of 2nd defendant's evidence in regard to the extent of land appellants are and 40 were in possession of as Uduwewala Estate, the extent so spoken to and claimed by appellants and in respect of which tea coupons issued must according to the evidence given by 2nd defendant and accepted by the Learned Judge include the lands in Plans X, Y and Z. This is distinctly shown on the plans submitted in the case.

(i) The Learned Judge has not dealt with the infirmities in plaintiff's case, the defects in plaintiff's plans and title and the speculative nature of her case. It is relevant to note that the plaintiff's plans were not shown at any time to those who inspected her property at various times while appellants' plans were submitted to Mr. Hermon who inspected both appellants' property and plaintiff's.

(j) Plaintiff's husband only conjectured that appellants took possession in 1944 but the learned Judge has held that that was so in fact though no evidence led warranted such a conclusion.

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(k) The lands in schedule B have not been identified as plaintiff's and appellants showed better title.

(*l*) The correspondence between plaintiff and defendants produced by plaintiff sufficiently establish that plaintiff came into Court because plaintiff's agent discovered that plaintiff was not in possession of all the lands covered by Thiedman's plan and not because in fact plaintiff or plaintiff's predecessors lost possession of the same.

(m) There was no reliable evidence that plaintiff or her predecessors entered into possession or planted the lands in suit because the reports and accounts and letters produced did not establish the same.

(n) The learned Judge has acted on a number of documents objected to and inadmissible. It is relevant to note that plaintiff sought to remedy the position by asking for a commission to examine certain witnesses the writer of the documents objected to which application was refused by the Learned Judge and by the Honourable the Supreme Court.

(o) The appellants having been in possession the presumption is that appellants were the owners. The learned Judge appears to have lost sight of the question as to the party on whom the burden of proof of title lies.

(p) The plaintiff did not claim the plantations before the Commissioner at the survey, the appellants claimed the same without a denial thereof by the plaintiff and the claim to compensation by plaintiff was it is submitted an afterthought.

(q) Several important factors in the case stressed in evidence have it is submitted not been discussed in the judgment.

(r) The damages awarded are inordinate having regard to the price of tea in the market, the nature of the land and the value as placed on it by plaintiff herself.

(s) In any event appellants are entitled to compensation for the plantations and to the Jus Retentionis.

40 (t) Appellants finally urge that the learned Judge has not discussed the question posed for consideration whether the lands in Plan X were the property of the Crown. It is submitted that the lands must be deemed to have been the property of the Crown. Even plaintiff did not contend that the fraud alleged vitiated the title conveyed by the Crown to

No. 31 Petition of Appeal of the Defendants to the Supreme Court I.4.53 --Continued. No. 31 Petition of Appeal of the Defendants to the Supreme Court 1.4.53 —Continued. appellants but that the plaintiff suffered damage and detriment thereby but the learned Judge holds that the Grant conveyed no title which it is respectfully submitted is not a correct proposition if title was in the Crown at the date of the Grant.

(u) The learned Judge appears to have thrown the burden of proof of title on appellants because he starts with the erroneous statement : "It is to be noted that plaintiff's title is not challenged."

Wherefore the appellants pray :---

That the judgment be set aside and plaintiff's action dismissed with costs or in the alternative that the award of damages and costs be deleted and appellants awarded compensation and the *Jus Retentionis*, and for costs and for such other and further relief as to Your Lordships' Court may seem meet.

> Sgd. J. H. FERNANDO, Proctor for appellants.

No. 32

JUDGMENT OF THE SUPREME COURT

No. 32 Judgment of the Supreme Court 11.5.56

D.C. Kegalle No. 6269

Present: BASNAYAKE, C. J. and PULLE, J.

- Counsel: H. V. PERERA, Q. C., with N. E. WEERA- 20 SOORIYA, Q.C., C. R. GUNARATNE, WALTER JAYAWARDENE and A. S. VANIGASOORIYA for the Defendants-Appellants.
 - SIR LALITA RAJAPAKSE, o.c., with CYRIL E. S. PERERA, o.c., VERNON WIJETUNGE and H. D. PERERA for the Plaintiff-Respondent.
- Argued on: 5th, 6th, 7th, 8th, 9th, 19th, 20th, 21st December, 1955 and 16th, 17th and 18th January, 1956.

Decided on : 11th May, 1956.

PULLE, J.-

S.C. No. 346

The two defendants in this case appeal from a decree dated the 14th May, 1954, declaring the plaintiff entitled to the lands described in the schedules A and B to the decree. It further ordered the defendants to pay to the plaintiff a sum of Rs. 11,739/- as damages up to the date of action, a further sum of Rs. 5,869/- per annum from date of action until the plaintiff was restored to the possession of the lands referred to above, to be ejected from those lands and to pay the costs of the action.

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There are eighteen lands described in schedule A. According to the decree land No. 18 in schedule A of the extent of 18A. 1R. 14P. is depicted in plan No. 1077 dated 22nd February, 1950, made by A. J. Frugtniet, licensed surveyor, and marked "Y" and filed of record. The lands numbered 1 to 17 (except No. 3), of the extent of 32A. 0R. 25P. are depicted in plan No. 1078 made by the same surveyor and marked "X".

No. 32 Judgment of the Supreme Court 11.5.56 —Continued.

Schedule B to the decree contains a description of ten allotments of lands and the decree states that these lands (except Nos. 1 and 8) are depicted in plan No. 1079 dated the 6th March, 1950, made by the same surveyor and marked "Z".

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Although the defendants took up the position both at the trial and in appeal that the plaintiff had failed to prove that the lands in schedule A, except No. 18, and the lands in schedule B had been properly identified with reference to the boundaries given in the description of each land it would be convenient to describe the premises in dispute as AI to AI8 and BI to BIO.

Stated broadly, without attempting to be meticulously accurate, the plaintiff's case is that by the year 1946 she became by virtue of certain conveyances, the owner of numerous allotments of land called the Kempitikanda Group. This group comprised three estates, namely, Kempitikanda estate of which an extent of 217 acres was planted with rubber, Moderatenne estate referred to also as Yatimahana 151 acres of which was planted with tea and 21 acres with rubber and Uttuwankande estate (referred to also as the Ambulugala division of Kempitikanda group) of which an extent of 150 acres was planted with tea. It is the plaintiff's case that the lands decreed in her favour, namely, those depicted in plans X, Y and Z form part of Uttuwankande estate or Ambulugala division on which the defendants had encroached about the years 1946 and 1947.

It may be convenient at this stage to state shortly the nature of the plantations on the lands in dispute in 1950, namely, at the time they were surveyed for the purposes of this case. The allotments AI to AI7 shown in plan "X" form physically one *corpus* without any lines of demarcation on the ground. It is wholly planted with tea of the age of 25 years. There were several jak trees interplanted which were about the same age. AI8 depicted in plan "Y" is called Taradenitenna. At the time of the survey it was planted mostly with tea, with jak and coconut trees interplanted. The tea was about 25 years old. There were two houses on this plot built of wattle and daub with thatched roofs.
Plan Z depicting the B lands showed an area of about II acres planted with young tea and another of about 2 acres unplanted and in jungle.

While the plaintiff strenuously maintained that she and her predecessors in title to the lands AI to AI8 planted them with tea and took the produce, she stated that the defendants encroached on the B lands while they were still in jungle and began about the year 1947 to No. 32 Judgment of the Supreme Court 11.5.56 —Continued.

raise a plantation. Admittedly the time during which the defendants were in possession of the B lands was not sufficient to give them a prescriptive title. The plaintiff's case is that while she had no possession of these lands she had a title superior to that of the defendants. The defendants' answer is that the lands being chena a superior title could only be in the Crown and that as against the "village title" pleaded by the plaintiff their possession, *ut dominus*, should prevail. One of the questions that has to be answered in this appeal is whether the trial Judge was right in accepting the contention of the plaintiff as to her claim to the B lands.

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Besides pleading that the title, on the deeds, to lands AI to AI7 was in the plaintiff she also claimed a title thereto by prescriptive possession, namely, her own and that of her predecessors in title. The defendants, besides relying on a Crown Grant dated 7th August, 1930, maintained that possession of AI to AI7 was at no time in the plaintiff or in those under whom she claimed and that the tea was planted and the crops appropriated as owners of Uduwawela estate.

In regard to A18 (Taradenitenna) the plaintiff has pleaded a chain of title which appears to give her only an undivided half share of the land. Nevertheless the entirety of it has been decreed in her favour and it must be on the basis of a finding of prescriptive title in regard to the remaining half. The contest as to possession is the same as in the case of A1 to A17, the plaintiff maintaining that it was planted by her predecessor in title and the defendants maintaining that the whole of it was planted and possessed by them exclusively.

It will thus be seen that one of the crucial questions in appeal is whether the appellants are right in their submission that the trial Judge's finding that the defendants encroached on lands AI to AI8 cannot be supported having regard to the whole of the evidence adduced in this case. The Crown Grant of 1930, which touches a large portion of the lands AI to AI7 in plan "X", has been attacked by the plaintiff on the ground, *inter alia*, that it was obtained by fraud. Assuming that the grant was valid, it would not avail the defendants, if the finding is correct that from about 1927 to 1946 the plaintiff and her predecessors in title had possession of these lands.

For a proper understanding of the essentials of the arguments on behalf of the defendants it may here be stated that, apart from the Crown Grant, they did not rely on any deed produced by them as conferring title. All the lands, they submitted, were, until the plantations began to be raised, chena lands in the Kandyan area and, therefore, the only title holder was the Crown and the deeds produced by either party were in their nature speculative and at best could serve only as evidence of possession *ut dominus* against an outsider who armed with a similar deed but having had no possession either by himself or his grantor attempts to dispossess him or to use it in any negotiations with the Crown for the purpose of obtaining a grant or to use it in proceedings initiated for the settlement of Crown lands. 'To understand the basis on which the trial Judge found in favour of the plaintiff it is not necessary to refer to all the numberous deeds relied on as forming her chain of title.

No. 32 Judgment of the Supreme Court 11.5.56 —Continued.

By two deeds P.1 of 1st April, 1925, and P2 of 8th April, 1925, a syndicate consisting of plaintiff's husband and two others became the purchasers of all those lands which could loosely be described as forming the Kempitikanda group. Almost immediately after, the syndicate by deed D6 of 9th April, 1925, conveyed 7/12ths shares of the lands described in four schedules marked A, B, C and D to P. M. Craib and A. D. Callander. Some of the lands conveyed by P2 and P4 were 10 excluded from the conveyance D6. By P5 of the 22nd March, 1926, the syndicate again conveyed to Craib and Callander 7/12ths shares of 26 allotments of land for what appears to be a nominal consideration of Rs. 500/-. The consideration for D6 was Rs. 175,000/-. Among the 26 allotments are included the parcels claimed by the plaintiff. As Ar to A18 and B1 to B10 make up 28 allotments it may in passing be stated that the Judge's finding is that A₃ is not in plan X, B₁ and B₈ were not surveyed and Bo has not been identified.

The balance 5/12ths in the hands of the syndicate was held by agreement as to 15/72 by the plaintiff's husband who by deed P7 of the 11th June, 1929, conveyed that share to the plaintiff. The description of the lands was not so elaborate as in P2 and P4. The schedule to P7 mentions three estates, namely, Utuwankande estate of about 500 acres, Kempitikanda estate of 540 acres and Moderatenne estate of about 40 acres, as being the subject matter of the conveyance.

The owners of 57/72 of Kempitikanda group agreed by P14 of 1945 to sell that share to the plaintiff subject to the terms and conditions set out in the agreement. In reference to the conveyance that was to be executed in pursuance of the agreement condition 8 provided,

"The said Kempitikanda estate and premises shall be described in the said transfer according to the description contained in the title deeds and with reference to the new Survey plan now in course of preparation but the vendors shall in no way be responsible for any inaccuracy in such new Survey Plan or Plans."

Condition 8 is referred to because in the conveyance marked P15 of 27th September, 1946, there is no reference to a plan or plans depicting the entirety of the subject matter of the conveyance.

In P15 there is the usual clause covenanting to warrant and defend title but it is subject to an exception which is relied upon by the appellants
40 to support their claim to undisputed possession of the lands in plans X, Y and Z. The exception reads,

"provided however that the aforesaid warranties and covenants of title and the vendors obligations to give possession are limited to such lands only as are in the possession of the vendors and conveyed by duly executed title deeds in favour of the vendors and depicted in Plans

No. 32 Judgment of the Supreme Court 11.5.56 —Continued. Nos. 328 and 329 dated the 1st day of September and the 18th day of July, 1945, respectively made by H. H. Maartensz of Colombo, Licensed Surveyor."

Plan No. 329 marked P124 has been produced. Admittedly it does not take in the lands in dispute. Plan No. 328 has not been produced but plaintiff's husband, who acted throughout for the plaintiff in all matters connected with the estate, stated in evidence that it had reference only to a portion of Kempitikanda estate planted in rubber.

The learned Judge's finding on possession is that in 1927 lands Ar to A18 were planted in tea for the syndicate by their agents Messrs. Lewis 10 Brown & Co., and later the management passed into the hands of Messrs. Bois Bros. from 1931 to 1946. To begin with there is no evidence furnished by the letter P72 of the 1st February, 1921, referred to by the Judge, to shew that Lewis Brown & Co., were "managing agents" of the estate in the sense in which that expression is usually understood. Managing agents on behalf of their principals the owners have direct control over the running of the estate. The superintendent would be under their control and they alone would determine how the estate should be developed. While there is evidence that superintendents of neighbouring estates were looking after Kempitikanda there is no evidence 20 that they did so either as servants or under the directions of Lewis Brown & Co., or Bois Bros. P72 on the face of it shows no more than that Lewis Brown & Co., prepared a Profit and Loss Account and a Balance Sheet for the season 1927 which showed among others an expenditure of Rs. 95,953.39 (Vide P73) on "Ambulugala 150 acres new clearing." The representative of Lewis Brown & Co., who was called as a witness was unable to say what the company did with the estates forming Kempitikanda group. Mr. L. J. Montgomerie, a director of Bois Bros. and who was connected with the company since 1925 states they were the "financial agents." His firm did not have to inspect the 30 estate or even to visit it for business purposes. Hence he could not say whether Amgulugala division was planted in tea to the extent of 150 acres. They were only concerned with finance and produce harvested and sent to them for sale. The superintendents would send the estimates of crop and expenditure and also monthly reports. All that the firm would do was to check up the arithmetical accuracy of the figures including the Bank balance, because ultimately all that the firm was interested in was the money owing by the proprietors and not whether the money put down as expenditure was put to the best use in the development of the estate. It seems to me that part proprietors like Craib, 40 Callander and Rodale determined on their own responsibility how Kempitikanda should be developed and the "agents" had sufficient confidence in their business ability and integrity to finance their undertaking on behalf of the syndicate. It is true that in P72 and in the documents spoken to by Mr. Montgomerie there are references to Ambulugala division being planted to the extent of 150 acres in tea, but we shall have to see in the light of the other evidence whether this circumstance

is a substantial ground for holding that the lands AI to A18 were not planted and possessed by the defendants as claimed by them. If, as I have said before, some of the proprietors were on the spot and superintended the working of the estate on behalf of the syndicate it is difficult to agree with the learned Judge when he calls Lewis Brown & Co., and Bois Bros. the "managing agents" of the Kempitikanda group.

No. 32 Judgment of the Supreme Court 11.556 —Continued.

The importance which the Judge attaches to statements in documents that Ambulugala division contained an extent of 150 acres in tea is seen in that part of the judgment where he deals with two reports P79 of 1934 and P83 of 1942 made by the witness, Mr. William Hermon, and another report P164 of 1936 made by Mr. Gordon Fellowes. It is submitted on behalf of the appellants that the Judge misdirected himself as to the contents of these reports.

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The report P79 was made by Mr. Hermon at the request of Mr. Craib for the purpose of assessing the potential productivity of tea on Kempitikanda group. In regard to this the Judge says,

"In 1934 Hermon visited the estate for valuation and made report P79 stating that Ambulugala was 150 acres in tea planted in 1927."

One might think from this summary that Mr. Hermon personally vouched
for the accuracy of the figure for Ambulugala. An examination of P79 and his evidence shews that that is not so. What the report says is,

"The total extent of the tea area is stated as 301 acres in two divisions as under :----

Ambulugala Division		150 acres planted in 1927.
Kempitikanda Division	••	151 acres planted in 1929."

The witness admitted that at the inspection he did not check up the acreage because he had no plan and none was shown to him.

In 1942 the plaintiff was considering a proposal to acquire the balance 57/72 share of the Kempitikanda group which she eventually 30 did in 1946. Mr. Hermon was engaged to value the estate and P83 is the report he made. The Judge says of this valuation that "Hermon who visited the estate was shown round by Rodale the Superintendent and found the estate (*i.e.* Ambulugala) to be 150 acres in tea planted in 1927." Mr. Hermon did not in 1942 check up the extent of Ambulugala planted in tea. On the contrary the report reads,

"Acreage : I was shown no plan of the estate but the approximate acreage is stated to be as follows :----

	Tea in bearing 1927		150 acres
2.	Tea in bearing 1928	••	151 acres
			,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

Again, it cannot be understood why the Judge suggests that Mr. Gordon Fellowes in his report P164 of 1936 was able to state that the extent in tea of Ambulugala was 150 acres. The report, on the face of it, is clear that Mr. Fellowes did not want on his own responsibility to state what No. 32 Judgment of the Supreme Court 11.5.56 - Continued. that acreage was. He records that on Ambulugala the tea in bearing is 150 acres and adds the qualification—" subject to survey ". In so far as it can be said that proof of Ambulugala being 150 acres in tea could militate against the case set up by the defendants, the submission on their behalf must prevail that in the process of reaching the decision as to this acreage the learned Judge has misdirected himself on the reports P79, P83 and P164.

A piece of evidence in this case which has not received in the judgment the attention it merited is to be found in the cross-examination of Mr. Hermon whose testimony has not been challenged by either side.

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On 30th June, 1938, Mr. Hermon, at the instance of the Tea Controller inspected the estate known as Uduwawela group which, according to the appellants, was about 85 acres in extent and containing within its area the lands AI to AI8. He sent his report DI2 of IIth July, 1938, to the Tea Controller. There were produced before him by the registered proprietor, the 1st defendant, three plans relating to three blocks of land. The plan of the first block is No. 1342 of 22nd July, 1927. It is for the land A18 named Taradenitenna in extent 18A. oR. 18P. The second plan No. 1444 of 17th July, 1928, is for a block of 7A. 3R. 03P. and third No. 1340 of 22nd July, 1928, for an area of 54Å. IR. 07P. Lands AI to AI7 are 20 admittedly within plan No. 1340. In cage 12 of his report D12 Mr. Hermon observed that the boundaries of the three blocks agreed with those given in the plans while he actually checked and found correct the extents stated in plans Nos. 1342 and 1444. He sent to the Controller a tracing of plan No. 1340. Towards the end of report D12 is a summary of the areas covered by plans Nos. 1342, 1444 and 1340—which were in tea. A feature in that summary and elsewhere in the report is the reference to a block 2A. oR. 33P. of seed bearers. This block has been identified beyond the possibility of a doubt as the subject of a Crown Grant to one Sendiya on Title Plan No. 312359 of 1915 of which a copy is 30 Exhibit P17. It is the identical block shown on the south western corner of Plan X. Mr. Hermon's description of the block reads,

"This is old tea allowed to run into bearers. A few bushes are pruned down and plucked...." The tracing of plan No. 1340 which Mr. Hermon took, the verification by him of the boundaries of the *corpus* depicted therein and the seed bearer block are together strong evidence of the claim made by the 1st defendant to the seventeen A lands. In point of fact the assessment of the A lands by the Tea Controller was on the basis that possession thereof was in the appellants.

A fact of some importance is that Mr. Hermon was shown round by one Mr. H. W. Gordon who was then overlooking Uduwawela Estate for the 1st defendant. Mr. Gordon a few months after officiated as Superintendent of Kempitikanda group when he took over from Mr. H. C. Rodale. In 1934 Mr. Hermon had visited Ambulugala and Yatimahana to make an assessment of the production of tea for the Tea Controller. In 1942 he made another visit for valuing Kempitikanda estate as a whole. Is it possible that Mr. Hermon was shown in 1938 on behalf of the owner of Uduwawela an area already shown in 1934 as part of Ambulugala division of Kempitikanda? To this question Mr. Hermon's answer is Supreme Court precise. He says,

No. 31 Judgment of the 11.5.50 -Continued.

"The land which I inspected as Uduwawela estate was a different land to that what I inspected as Ambulugala division. If I went to the same land twice I would have identified it and reported so to the Tea Control Department.... If the same block was claimed by two different parties, I would have realised that there was a conflicting claim and would have reported to the Tea Controller." It is unfortunate that 10 the learned Judge does not advert to the implications of Mr. Hermon's evidence of his visit to assess the productive capacity of Uduwawela Estate. That he could not have been shown round the disputed portion depicted in plan X by both parties receives support from the circumstances that neither P79 nor in P83 (the reports on Kempitikanda tea) is there a reference to the seed bearing block of A2. oR. 33P. The result which the plaintiff cannot avoid is that Mr. Craib in 1934 and Mr. Rodale in 1942 (both of them co-owners of Kempitikanda) did not claim the lands in dispute in this case as part of Kempitikanda or of Ambulugala division. 20 The plaintiff evidently felt that Mr. Hermon's evidence was unfavourable to him and that he should counteract it with the evidence of Mr. Rodale. An application to have Mr. Rodale's evidence taken on a commission was disallowed, so that the case for the plaintiff had to be closed with the damaging evidence of a witness called by her.

In dealing with the case set up by the appellants some preliminary observations are called for. The case for the plaintiff is that since 1946 the appellants have been in wrongful possession of the A lands. The extent of AI to AI8 is about 50 acres. It is difficult to imagine by what process the plaintiff lost possession of Taradennitena of 18 acres (Plan Y)

30 which was an isolated block and 32 acres representing the blocks in plan X by a process of gradual encroachment in a northward direction. The Ambulugala division of the plaintiff is separated from Yatimahana division said to contain 151 acres of tea by about six miles. The loss of about one third of Ambulugala ought to have been reflected under several headings in the books showing the accounts of that division. There must have been a drop in the amount of green leaf plucked and consequently of made tea. It is said in effect in P84 of 1944 by Mr. Rodale that the entirety of 150 acres of Ambulugala was in production. P84 gives the figures for tea for each of the months January to May, 1944, 40 separately for Vatimahana and Ambulugala. Monthly reports of production (P85 to P87 and P127 to P145) for the years 1942 to about the end of 1944 have been produced. A drop in production which could fit into plaintiff's case cannot be ascertained from these reports. Production figures from 1945 onwards would have been more helpful but the fact remains that the plaintiff has not placed them before court.

Reference has already been made to the Crown Grant of 1930 (D17) on which the appellants lay claim to a substantial portion of the area No. 32 Judgment of the Supreme Court 11.5.56 --Continued. depicted in Plan X (*Vide* also the Title plans Dr7A to D17D). In 1930 the Crown was in a position to give a perfect title to a grantee of the lands mentioned in D17. If as is stated the syndicate and their successors were in full and effectual possession of the lands since 1927 it is incredible that the defendants who owned lands to the south refrained from asserting their title on D17 and resorted to an act of sly trespass long after the grant itself had become useless owing to the acquisition by the co-owners of Kempitikanda of an independent title by possession.

In that part of the judgment where the learned Judge deals with the Crown Grant D17 there is a passage which suggests that the grant does 10 not apply to lands A1 to A17. This hardly needs refutation as it is apparent at a glance that three large areas in X are identical with Title Plans 405308, 405309 and 405310 which are expressly covered by the Grant.

I must confess that I am wholly unable to understand the reasons suggested by the learned Judge for the view that the Grant must be regarded as inoperative and nothing that I have heard during the lengthy arguments in appeal has made me wiser. The appellants' chain of title undoubtedly is as speculative as the plaintiff's or of any other person who seeks to arm himself with deeds with the purpose of encroaching on 20 and exploiting Crown lands in the Kandyan districts. The fact, however, is indisputable that by deed marked D29 of 18th January, 1928, one A. R. Senanayake and H. W. Boyagoda (two persons who figure in plaintiff's chain of title as well) purported to sell a number of allotments of land of which one was called Uduwawela estate of 85 odd acres, depicted in Plan No. 1340 of 22nd July, 1927, and another called Taradennitena of 18A. 18P. depicted in Plan No. 1342. One recalls these were the plans which were produced by the 1st defendant at Mr. Hermon's inspection of 1938—D12. The fact to be remembered is that these plans were in existence in 1920 when the 1st defendant made the application P117 30 for settlement of the lands depicted in the sketch attached to it. I do not see how any adverse comment on that application could be made for the reason that a deed of rectification D30 of the 8th February, 1928, was not mentioned in it. There is a recital in D₃₀ that there are other lands comprising Uduwewela estate which are outside Plan No. 1340. The ist defendant had supplied sufficient particulars to the Government Agent in regard to the identity of those portions of land appearing in Plan No. 1340 which she desired to be settled on her.

The application gives the names of three villages Dodantale, Uduwawela and Polwatta as the localities in which the land was situated. It is said that deed D29 gives the name of only the village Uduwawela. If one examines the schedule of the seventeen A properties in the plaint it could be said of them collectively that they are situated in the three villages mentioned above. I cannot, however, agree that the fact that the village of Polwatta (not appearing in D29) is mentioned in P117 amounts to a fraudulent misrepresentation which nullifies the Crown Grant. In fact D17A, the Title Plan for 25A. 3R. 14P., states that that

block is situated in Uduwawela and Polwatta villages, while plan D17B for 1A. 3R. 34P. states that it is in Dodantale and Uduwawela villages. There was no question of misrepresentation because the Crown was in a position on the particulars furnished in PII7 to obtain a description of the lands from D29 and to know their proper location by reference to Plan No. 1340.

On the application P117 a Preliminary plan No. 3994 marked D15 was prepared by an authorised surveyor who carried out a survey in October, 1929. The area surveyed was divided into 29 allotments. 10 A report (D14) on each of the allotments (under various headings) was sent by the Chief Headman of the District to the Kegalle Kachcheri in December, 1929. The Chief Headman is the witness C. L. Ratwatte called by the appellants. His evidence when taken in conjunction with D14 is perfectly clear that the only claimant to the 29 lots was the 1st defendant and she alone was in possession. He has outlined the procedure for carrying out the preliminary survey and the giving of notice to public to put forward their claims, if any, to the lots surveyed. He refers to the inquiry at the spot by the Chief Headman, the report to the Kachcheri and the step taken thereafter to settle (or not to settle, as the case may be)

20 the lots surveyed. D₂ is the *Gazette* notification dated 16th January, 1930, giving particulars of the 29 lots and stating that they would be put up for settlement in accordance with the regulations of Government regarding land sales. It is a matter for comment that if the plaintiff and her co-owners were in 1930 carrying on extensive agricultural operations on the A lands in plan X, as part of the Ambulugala division, that they were unaware of the survey carried out for preparing preliminary plan No. 3994 or of the steps taken by the Crown to dispose of lands claimed by them to strangers.

When Mr. Ratwatte was cross-examined he was shown a copy of a 30 letter dated 18th February, 1929, addressed to the Assistant Government Agent, marked P177 which reads as follows :---

"Out of the whole block there were about 18 acres of tea about to years old and the rest were chena lands of about 8 years of age before the chenas were planted about $1\frac{1}{2}$ years ago.

There is no objection to the C.Q.P. being granted to this land provided that the usual reservations for the paddy fields and the Gansabhawa path are allowed." At the foot of the copy is a certificate to the effect :

" I certify that the foregoing is a true copy of the Ratemahatmaya, Galboda and Kinigoda Korales report No. 318/L.E. of 18.2.29, regarding the settlement of lands in P.P.3994." In regard to this letter he admitted 40 that it was a report on the 1st defendant's application of 18th January, 1929, which is marked P117, but he was compelled to go back on that evidence in re-examination. The learned Judge appears as a result of this to attach no importance to the detailed report of the witness on each of the 29 lots in D14. To my mind it is obvious that the witness

No. 32 Judgment of the Supreme Court 11.5.56 -Continued.

No. 32 Judgment of the Supreme Court 11.5.56 —Continued. had made a slip. It is neither the case for the plaintiff nor for the defendants that in 1929 there could have been any tea anywhere in A1 to A18 which was 10 years old. The witness could not on 18th February, 1929, as the certificate at the end of P177 suggests, have reported regarding settlement of lands in Preliminary Plan No. 3994 for the reasons that, as the plan D15 shows on the face of it, that the actual survey, leading up to the preparation of the plan, was in October, 1929. In my opinion there is no justification whatever for not giving full effect to Mr. Ratwatte's report D14 which was made in the course of his official duties, shortly after the preparation of the preliminary plan and giving under numerous columns particulars of each of the lots. It is not for a moment claimed that any one connected with Kempitikanda asserted a claim to any portion of the A lands depicted in plan X.

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There are two portions in plan X which were excluded from the Crown Grant of 1930. One is on the South-western end in that plan and is marked T.P. No. 312359. A copy of the title plan is the document P71. This lot has been clearly identified as the seed bearer portion of Uduwawela estate in Mr. Hermon's report D12. His evidence, which has already been dealt with in some detail, corroborates the case set up by the defendants that they were all along in possession of this block. The second block is on the south-eastern end and is depicted separately in the plan No. 1964 marked D32 of 11th March, 1932. Its extent is 4A.oR.11P. There is a reference in D32 to D. C. Kegalle case No. 9355 in which a decree, D40 dated 7th December, 1932, was entered declaring the 1st defendant entitled to the land depicted in D32. It is again inconceivable that the ist defendant successfully vindicated title to this lot against two villagers without having had at some period possession of it or that after obtaining the decree she did not continue to possess it. The possibility of the owners of Kempitikanda group having had possession before or since 1032 has to be ruled out.

In the course of the judgment the learned Judge seems to think that the entries in the account book D51 produced by the 2nd defendant shewed no more than the planting of 46 acres to the south of the 17A--lands depicted in plan X. An examination of the entries in D51 shows the existence of a 34 acre block on which agricultural operations were carried on. There is reference to Taradennitenna which was about 18 acres and to Aradenela of 4 acres—which was the subject matter of D.C. Kegalle case No. 9555 referred to in the previous paragraph. There is also reference in D51 to what was called the 11 acre block called Koskolawatte which on a survey (vide plan D64) was found to be 7A. 3R. 03P. It is beyond dispute that as the result of a final decree D63 of 1934 the 1st defendant became the owner of a portion to the south of the A lands in plan X of about 5 acres. Whatever inferences one may draw from the entries in the account book D51 it is difficult to comprehend how the learned Judge has reached the result that it supports the evidence of the plaintiff's husband that his wife was, at all times relevant to the dispute in the case, in possession of Taradenitenna depicted in plan Y.

Without unduly lengthening this judgement I ought briefly to refer to a few more matters. A plan P17 was prepared in 1925/1926 by Mr. B. J. Thiedeman. It was supposed to depict in separate lots each of the numerous lands which went to make up Kempitikanda. Mr. Thiedeman had no previous plans to work on nor were the deeds which were said to refer to the lots placed before him. Lands were blocked out and he was asked to survey each separate lot. It is impossible to accept the submission, having special regard to the character of chena lands in a Kandyan province, that the deeds read with the plan raise a presumption of title or ownership. On this view the claim of the plaintiff to the B lands fails completely because by virtue of possession the 1st defendant, as against the plaintiff, had a better title. After dealing with six points urged by the defendants against the plaintiff's claim the Judge says,

" It is to be noted that plaintiff's title is not challenged."

With all respect it seems to me that points numbered 2, 3 and 4 did amount to a challenge of plaintiff's "title" and also to a submission that her deeds and plan P17 were not of any value to raise a presumption of ownership in her favour.

Our attention has been called to the correspondence beginning with the letter P88 of 2nd August, 1947, and ending with the letter P100 of 18th February, 1948, between the plaintiff and the 2nd defendant. They certainly do not give one the impression that the defendants were accused of forcible dispossession of plaintiff's agents or servants. The correspondence hardly throws any lights on how large areas planted in tea and forming part of Ambulugala division had been encroached upon without the knowledge of those persons who were in charge of the division.

When we examined the evidence called by the plaintiff we find that the reservation made in deed P15 limiting the covenant to warrant and defend title to the lands actually in possession of the vendors, namely,
those lands in plans Nos. 328 and 329, within which the lands in dispute do not fall and the facts spoken to by Mr. Hermon as to his inspections of Ambulugala division and Uduwawela estate have the effect of considerably shaking the case set up by the plaintiff. Mr. Hermon's evidence taken in conjunction with the application for the Crown Grant and its ultimate disposal by the grant of the lands depicted in plans D17A to D17D strongly support the other evidence called by the defendants to prove that they did not come into possession of the A lands by encroaching on them in 1946 but that since 1928 they had planted them with tea and taken the produce without any challenge to their title until 1947. The material on which the learned Judge came to a firm

conclusion that Ambulugala was 150 acres in tea and that, therefore, it followed that there must have been an encroachment on that division has coloured his other findings and led him especially to regard, with wholly unmerited suspicion, the evidence of Mr. Ratwatte.

No. 32 Judgment of the Supreme Court 11.5,56 --Continued.

No. 32 Judgment of the Supreme Court 11.5.56 —Continued.

I am quite satisfied that on the evidence the learned Judge should have held in favour of the defendants. I would set aside the decree under appeal and dismiss plaintiff's action with costs here and below.

> Sgd. M. F. S. PULLE, Puisne Justice.

BASNAYAKE, C. J.

I agree.

Sgd. HEMA H. BASNAYAKE, Chief Justice.

No. 33 Decree of the Supreme Court 11.5.56 No. 33 DECREE OF THE SUPREME COURT

> D.C.(F) 346-L 1954.

ELIZABETH THE SECOND, QUEEN OF CEVLON AND OF HER Other Realms and Territories, Head of The Commonwealth

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

MRS. C. M. CLARA FERNANDO of Colombo and another......Defendants-Appellants.

against

MRS. C. H. M. PEIRIS of Colombo 10..... Plaintiff-Respondent.

Action No. 6269

District Court of Kegalle.

This cause coming on for hearing and determination on the 5th, 6th, 7th, 8th, 9th, 19th, 20th, 21st December, 1955 and 16th, 17th & 18th January, 1956 and 11th May, 1956 and on this day, upon an appeal preferred by the Defendants-Appellants before the Hon. H. H. Basnayake, 9.c., Chief Justice and the Hon. M. F. S. Pulle, 9.c., Puisne Justice, of this Court, in the presence of Counsel for the Appellants and Respondents.

It is considered and adjudged that the decree under appeal be and 30 the same is hereby set aside and the plaintiff's action is dismissed with costs here and below.

Witness the Hon. Hema Henry Basnayake, Q.C., Chief Justice at Colombo, the twenty-ninth day of May, in the year One thousand Nine hundred and Fifty-Six, and of Our Reign the Fifth.

> Sgd. W. G. WOUTERSZ, Dy. Registrar, S.C.

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207

No. 34

APPLICATION FOR CONDITIONAL LEAVE TO APPEAL TO THE PRIVY COUNCIL

No. 3.4 Application for Conditional Leave to Appeal to the Privy Council 4.6.56

IN THE SUPREME COURT OF THE ISLAND OF CEVLON

In the matter of an application for Conditional Leave to Appeal to Her Majesty in Council.

MRS. CECILY HARRIET MATILDA PEIRIS of No. 66, Campbell Place, Colombo 10......Plaintiff.

S.C. No. 346(F) of 1954 Vs.

- 1. MRS. CHARLOTTE MARY CLARA FERNANDO of "Credon", 18, Castle Street, Colombo.
- 2. MRS. REINEE MARY PHYLLIS PERERA, wife of Dr. A. F. S. Perera, Colombo.....Defendants.

And

- MRS. CHARLOTTE MARY CLARA FERNANDO of "Credon", 18, Castle Street, Colombo.
- 2. MRS. REINEE MARY PHYLLIS PERERA, wife of Dr. A. F. S. Perera, Colombo......Defendants-Appellants.

Vs.

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MRS. CECILY HARRIET MATILDA PEIRIS of No. 66, Campbell Place, Colombo.....Plaintiff-Respondent.

On this 4th day of June, 1956.

To The Honourable the Chief Justice and other Justices of the Supreme Court of the Dominion of Ceylon.

The humble peitition of Cecily Harriet Matilda Peiris, the plaintiffrespondent abovenamed, appearing by her Proctor, Edward R. de Silva, states as follows :—

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- 1. That feeling aggrieved by the judgment and decree of the Honourable Supreme Court pronounced on 11.5.1956 the plaintiffrespondent is desirous of appealing therefrom to Her Majesty in Council.
- 2. That the said judgment is a final judgment and the matter in dispute on the appeal amounts to over the value of Rupees Five Thousand.

¹⁰ D.C. Kegalle. 6269

No. 34 Application for Conditional Leave to Appeal to the Privy Council 4.6.56 --Continued. 3. That notice of the intended application for leave to appeal was served on the defendants-appellants on the 19th day of May 1956 as appears from the report of the Fiscal Officer, which report is filed of record in these proceedings.

Wherefore the Appellant prays for Conditional Leave to appeal against the said judgment of this Court dated 11.5.1956 to Her Majesty in Council.

Sgd. E. R. DE SILVA, Proctor for Plaintiff-Respondent.

No. 35 Decree Granting Conditional Leave to Appeal to the Privy Council 16.7.56

No. 35

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DECREE GRANTING CONDITIONAL LEAVE TO APPEAL TO THE PRIVY COUNCIL

ELIZABETH THE SECOND, QUEEN OF CEYLON AND OF HER Other Realms and Territories, Head of The Commonwealth.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application dated 4th June, 1956 by the Plaintiff-Appellant for Conditional Leave to Appeal to Her Majesty the Queen in Council against the decree of this Court dated 20 11th May, 1956.

- I. MRS. CHARLOTTE MARY CLARA FERNANDO of "Credon", 18, Castle Street, Colombo.
- 2. MRS. REINEE MARY PHYLLIS PERERA, wife of Dr. A. F. S. Perera, Colombo......Defendants-Respondents.

Against

MRS. CECILY HARRIET MATILDA PEIRIS of No. 66, Campbell Place, Colombo......Plaintiff-Appellant.

Action No. 6269 (S.C.346/F/1954)

District Court of Kegalle.

This cause coming on for hearing and determination on the 16th day 30 of July, 1956 before the Hon. M. C. Sansoni, Puisne Justice and the Hon. N. Sinnetamby, Puisne Justice of this Court, in the presence of Counsel for the Appellants and Respondents.

It is considered and adjudged that this application be and the same No. 35 Decree Granting is hereby allowed upon the condition that the applicant do within one month from this date :---

Deposit with the Registrar of the Supreme Court a sum of I. Rs. 3,000/- and hypothecate the same by bond or such other security as the Court in terms of Section 7(I) of the Appellate Procedure (Privy Council) Order shall on application made after due notice to the other side approve.

2. Deposit in terms of provisions of section 8 (a) of the Appellate Procedure (Privy Council) Order with the Registrar a sum of Rs. 300/in respect of fees mentioned in Section 4 (b) and (c) of Ordinance No. 31 of 1909 (Chapter 85).

Provided that the applicant may apply in writing to the said Registrar stating whether he intends to print the record or any part thereof in Ceylon, for an estimate of such amounts and fees and thereafter deposit the estimated sum with the said Registrar.

Witness the Hon. Hema Henry Basnayake, o.c., Chief Justice at Colombo, the twenty-seventh day of July, in the year One thousand Nine hundred and Fifty-Six and of Our Reign the Fifth.

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Sgd. W. G. WOUTERSZ, Dy. Registrar, S.C.

No. 36

APPLICATION FOR FINAL LEAVE TO APPEAL TO THE PRIVY COUNCIL

No. 36 Application for Final Leave to Appeal to the Privy Council 3.8.56

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for Final Leave to Appeal to Her Majesty in Council under the provisions of the Appeals (Privy Council) Ordinance Cap. 85.

30 CECILY HARRIET MATILDA MRS. PEIRIS presently of Mont Cliff, No. 600, Hirimbura Road, Galle.....Plaintiff.

S.C. No. 346(F) of 1954

D.C. Kegalle. 6269

I. MRS. CHARLOTTE MARY CLARA FERNANDO presently of No. 101, Cotta Road, Borella and

Vs.

2. MRS. REINEE MARY PHYLLIS PERERA presently of No. 16 Alfred Place, Kollupitiya, Colombo.......Defendants.

Conditional Leave to Appeal to the Privy Council 16.7.56 -Continued.

No. 36 Application for Final Leave to Appeal to the Privy Council 3.8.56 --Continued. MRS. CECILY HARRIET MATILDA PEIRIS presently of Mont Cliff, No. 600, Hirimbura Road, Galle....Plaintiff-Appellant.

Vs.

- I. MRS. CHARLOTTE MARY CLARA FERNANDO presently of No. 101, Cotta Road, Borella and
- 2. MRS. REINEE MARY PHYLLIS PERERA presently of No. 16 Alfred Place, Kollupitiya, Colombo.....Defendants-Respondents.

On this 3rd day of August, 1956.

The humble petition of the plaintiff-appellant abovenamed appearing by her proctor, Edward R. de Silva, states as follows :—

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- 1. That the plaintiff-appellant on the 16th day of July, 1956 obtained conditional leave from this Honourable Court to appeal to Her Majesty in Council against the judgment of this Court pronounced on the 11th day of May 1956.
- 2. That the plaintiff-appellant has in compliance with the conditions on which such leave was granted has
 - (a) on the 2nd day of August 1956 deposited with the Registrar of this Court the sum of Rs. 3,000/- being the security for costs of appeal in terms of Section 7(1) of the Appellate Procedure (Privy Council) order and hypothecated 20 the sum of Rs. 3,000/- with the Registrar of this Court by a bond dated this day for the due prosecution of the appeal and the payment of all costs that may become payable to the defendants-respondents to this appeal in the event of the appeallant not obtaining an order granting him final leave to appeal or of the appeal being dismissed for non-prosecution or of Her Majesty in Council ordering the plaintiff-appellant to pay the defendants-respondents costs of appeal and
 - (b) on the 2nd day of August 1956 deposited with the Registrar 30 of this Court the sum of Rs. 300/- in respect of the amounts and fees as required by Paragraph 8(a) of the Appellate Procedure (Privy Council) order 1921 made under Section 4(b) and (c) of the Ordinance No. 31 of 1909.
- 3. Notice of this application for final leave has been given to the defendants-respondents and their proctors.

Wherefore the plaintiff-appellant prays :—that she be granted final leave to appeal against the said judgment of this Court dated the 11th day of May 1956 to Her Majesty in Council.

No. 37

211

DECREE GRANTING FINAL LEAVE TO APPEAL TO THE PRIVY COUNCIL

No. 37 Decree Granting Final Leave to Appeal to the Privy Council 10.8.56

ELIZABETH THE SECOND, QUEEN OF CEVION AND OF HER OTHER REALMS AND TERRITORIES, HEAD OF THE COMMONWEALTH.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application dated 3rd August, 1956 by the Plaintiff-Appellant for Final Leave to Appeal to Her Majesty the Queen in Council against the decree of this Court dated 11th May 1956.

MRS. CECILY HARRIET MATILDA PEIRIS presently of "Mont Cliff", No. 600, Hirimbura Road, Galle....Plaintiff-Appellant.

Against

- I. MRS. CHARLOTTE MARY CLARA FERNANDO, presently of No. 101, Cotta Road, Borella and
- 2. MRS. REINEE MARY PHYLLIS PERERA presently of No. 16, Alfred Place, Kollupitiya, Colombo.....Defendants-Respondents.

20 Action No. 6269 (S.C.346/F/1954)

District Court of Kegalla.

This cause coming on for hearing and determination on the 10th day of August 1956 before the Hon. E. H. T. Gunasekara, Puisne Justice and the Hon. N. Sinnetamby, Puisne Justice of this Court, in the presence of Counsel for the Appellant and 1st and 2nd Respondents.

(The applicant has complied with the conditions imposed on her by the Order of this Court dated 16th July, 1956, granting Conditional Leave to Appeal).

It is considered and adjudged that the Applicant's Application for Final Leave to Appeal to Her Majesty the Queen in Council be and 30 the same is hereby allowed.

Witness the Hon. Hema Henry Basnayake, Q.C., Chief Justice at Colombo, the 27th day of August, in the year One thousand Nine hundred and Fifty-Six and of Our Reign the Fifth.

> Sgd. W. G. WOUTERSZ, Dy. Registrar, S. C.