In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF CEYLON.

No. 75 of 1947

BETWEEN

H. E. WIJESURIYA ... ... (*Plaintiff*) *Appellant,*

AND

THE ATTORNEY-GENERAL OF CEYLON (*Defendant*) *Respondent.*

Case for the Appellant.

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RECORD.

1. This is an appeal from a Decree of the Supreme Court of Ceylon dated 22nd October, 1946, allowing the Respondent's appeal from a Decree of the District Judge of Colombo dated 3rd November, 1944, and dismissing the Appellant's cross-appeal that the Decree of the said District Judge be varied as to the amount of damages awarded to the Appellant. The learned District Judge had by his Decree ordered that the Respondent (Defendant) do pay the Appellant (Plaintiff) the sum of Rs. 49,800 as damages and the sum of Rs.6,000 with interest thereon at 5 per cent. per annum from the 15th March, 1943, to the date of the said Decree. In allowing the Respondent's appeal and dismissing the Appellant's cross-appeal on the amount of damages recoverable, the Supreme Court of Ceylon dismissed the Appellant's claim for damages and directed that judgment be entered for the Appellant for Rs.6,000 with legal interest thereon from 10th March, 1943, till 15th December, 1943. p. 128, l. 20. p. 115, l. 15. p. 119, l. 1.

2. The main questions arising in the Appeal are :—

(A) Whether an oral agreement was made on 4th March, 1943, between the Plaintiff and the Assistant Government Agent, Uva Province, one N. Chandrasoma, on behalf of the Crown, whereby it was agreed that the Plaintiff should have, in consideration of payments to the Crown at the rate of Rs.6,000 per annum, the right to

tap and take the produce of the rubber trees on the Keenapitiya Crown rubber lands in the Badulla District for a period of four years, two and a half months from 15th March, 1943;

(B) Whether that agreement was valid and enforceable in law by virtue of the Prevention of Frauds Ordinance (Legal Enactments of Ceylon, Vol. II, chapter 57) and the Land Sale Regulations, 1926;

(C) The amount of the damages recoverable by the Appellant for the breach by the Crown of the agreement, in addition to the return of the deposit of Rs.6,000 paid by the Appellant at the time of making the agreement.

pp. 120-128. The Supreme Court of Ceylon differed from the District Judge of Colombo on the facts as well as on the law. They did not deal with the quantum of damages.

p. 6, l. 21. 3. By his plaint dated 11th February, 1944, against the Respondent as representing the Crown the Appellant claimed that in pursuance of the agreement mentioned he had deposited Rs.6,000 with the office of the Government Agent of Uva Province as a first annual payment under the agreement, that the Crown had failed to perform the agreement and that in consequence he had suffered damage in the sum of Rs.75,000. He accordingly claimed Rs.75,000 as damages together with the return of the deposit of Rs.6,000 with interest thereon. In his answer the Respondent denied that there was any such agreement as alleged by the Appellant, and alleged that the sum of Rs.6,000 was deposited by the Appellant in anticipation of his obtaining a lease of the Crown lands in question if and when they were vacated by one Sabapathipillai who had been given notice to quit on 15th March, 1943, that the notice to quit was cancelled on 11th March, 1943, and that the deposit could have been withdrawn by the Appellant at any time. The Respondent brought the sum of Rs.6,000 into Court and further pleaded that if such an agreement as the Appellant alleged had been made it was invalid and unenforceable at law by reason of the Prevention of Frauds Ordinance and the Land Sale Regulations.

p. 8, l. 10.

4. The evidence given at the trial of the action, which lasted seven days, five of which were taken up in whole or in part with the examination of witnesses, consisted of the oral evidence of the Appellant, the Government Agent, the Assistant Government Agent and one Attanayaka, chief land clerk in the Government Agent's office at Badulla, together with a substantial body of documentary evidence, most of which was produced by the Respondent. The evidence given fell into three main parts, dealing with the events before on and after 4th March, 1943. The only really acute conflict of evidence arose as to the events of that day, but it has throughout been the Appellant's case and is respectfully submitted that the actions of the various Government

pp. 12-94.

pp. 134-196.

officials before and after that date summarized below strongly support the Appellant's own evidence as to the oral agreement then reached between himself and the Assistant Government Agent. p. 164, l. 1.

5. The matter originated with the publication on 23rd January, 1942, in the Government Gazette by the Land Commissioner at Colombo of a notification to the public that the Government Agent of the Province of Uva would on 7th March put up to auction " the lease of the right to tap and take the produce of the rubber trees " on certain mentioned Crown lands, of which about 170 acres were in rubber, for a period of five years. The conditions of auction provided that the purchaser should pay one-fifth of the rent immediately after the sale and the balance in four equal annual instalments. The Appellant, who is a landed proprietor and a rubber planter of some experience and was the holder of leases of various other Crown lands was the second highest bidder at the auction, the highest bidder being one Sabapathipillai with a bid of Rs.44,000. The latter, however, only paid one-tenth of the first year's rent on the date of the auction, promising to pay the balance within a month. This he was unable to do and the Assistant Government Agent on 2nd April, 1942, requested instructions of the Land Commissioner in Colombo. The latter replied on 6th April asking for recommendations including a report on whether the second highest bidder was prepared to comply with the conditions of sale. In the meantime on 5th April, 1942, the first Japanese air raid on Ceylon had taken place and this caused a drop in property prices. The Appellant informed Mr. Chandrasoma that he was prepared to make the purchase on the sale conditions but at Rs.30,000, which was substantially lower than his highest bid at the auction, but was the figure at which the other bidders dropped out, and Mr. Chandrasoma on 17th April, 1942, recommended to the Land Commissioner that Sabapathipillai be given until the end of the month to pay the balance of the first year's payment, but that if he defaulted the Appellant be given the rights for Rs.30,000. The Land Commissioner approved this recommendation, but Sabapathipillai, who was given extra time, had by 31st May, 1942, made the necessary payment and he was on 10th August, 1942, granted a permit for five years as from 31st May, 1942, " to take the produce of the plantations " on the Crown lands in question. The Appellant then dropped out of the matter for the time being, but it is submitted that it is noteworthy that the first enquiry after the auction as to his being still interested in the purchase came from the Land Commissioner and that the Assistant Government Agent recommended that in the event of default by the highest bidder the rights should be granted to the Appellant.

p. 165, l. 33. p. 12, l. 10. p. 12, l. 30. p. 165, l. 28. p. 165, l. 20. p. 166, l. 10. p. 13, l. 2. pp. 13, 79. p. 166, l. 28. pp. 12, l. 30, 21, l. 3. p. 167, l. 20. p. 171, l. 1.

6. Subsequently to 31st May, 1942, Sabapathipillai met with difficulties in tapping the rubber on the lands in question and on 7th January, 1943 requested the Land Commissioner for sanction to transfer his permit to another. In reporting on this application to the Land Commissioner, the Government Agent on 21st January, 1943, narrated the previous history of the matter including the unsatisfactory way in which Sabapathipillai had

p. 173, l. 10. p. 172, l. 10. p. 173, l. 1.

worked the permit and concluded that if the Land Commissioner considered that the permit should be cancelled it should be granted to the Appellant. In the meantime the various difficulties experienced by Sabapathipillai in
p. 32, l. 32. working the permit, which were common property in the neighbourhood, had come to the Appellant's notice, and, on hearing of the application to transfer,
p. 14, l. 4. the Appellant, thinking he had a good claim to the permit, visited on 23rd January Mr. Wijerathe his advocate in Colombo, and asked him to interview
p. 14, l. 15. the Land Commissioner on his behalf. Mr. Wijerathe did this on 27th January and having seen him told the Appellant that the Land Commissioner had made an order that the Appellant should be granted the rights in question on the 10
p. 174, l. 10. basis of Rs.30,000 for five years. By letter dated 28th January, 1943, the Land Commissioner instructed the Government Agent to cancel the permit forthwith on the grounds that it had been flagrantly violated and authorized him thereafter to issue a permit to the Appellant to take the produce of the plantations for the balance period of five years on the basis of total payments of Rs.30,000 for a complete period of five years.

p. 174, l. 25.
p. 175, l. 10.
p. 175, l. 1. 7. At the Government Agent's suggestion this proposed course of action was submitted to the Attorney-General for his opinion and, after receipt of this, the Land Commissioner on 25th February instructed the Government Agent to take the necessary action in accordance with his 20
p. 176, l. 14. previous instructions of 28th January. Accordingly on 2nd March, 1943, Mr. Chandrasoma the Assistant Government Agent, wrote to Sabapathipillai cancelling his permit and requested him to deliver peaceful possession of the lands to the Divisional Revenue Officer on 15th March, 1943. This was the position at the time of the crucial visit of the Appellant to the Government Agent's office on 4th March, 1943.

p. 15, l. 37. 8. The Appellant's evidence as to what transpired on that day was that he first went and saw the chief land clerk at the Government Office at Badulla who told him that he (the chief land clerk) had been asked by the Assistant Government Agent to ascertain whether the Appellant was willing 30
p. 19, l. 16. to deposit Rs.6,000 being the annual rent, in order that he might be given the lease. The Appellant then went into Mr. Chandrasoma's office where Mr. Chandrasoma confirmed what the chief land clerk had said and the Appellant
p. 27, l. 6. agreed to the terms. Mr. Chandrasoma then said that the Appellant would
p. 19, l. 19. be given the lease and would be put in possession on the 15th March. The Appellant then returned to the Land Department and drew a cheque for Rs.6,000. For this cheque the Appellant subsequently received the following receipt dated 5th March, 1943 :—

p. 178, l. 1. "Received from Mr. E. Wijesuriya the sum of Rupees Six Thousand only and cents——being rent on Keenapitiya Rubber 40 Estate pending issue of lease."

p. 179, l. 1. The next that the Appellant heard about the matter was the receipt by him of a letter dated 6th March, 1943, from the Chena Surveyor stating that

the latter had been instructed by the Government Agent, Uva, to put the Apellant in possession of the lands in question as soon as the present lessee vacated it on the 15th as the lease had been given to the Apellant.

9. The evidence given by Mr. Chandrasoma and the chief land clerk Attanayaka was in direct conflict with that of the Appellant as to the interviews of the 4th March. Mr. Chandrasoma denied that he had any interview p. 78, l. 6.
in his office with the Appellant on that day. Attanayaka agreed that he had p. 60, l. 34.
an interview with the Appellant, that he had previously received instructions from Mr. Chandrasoma to ascertain whether the Apellant was willing to take
10 up the permit on the terms proposed by the Land Commissioner and that he p. 61, l. 2.
told the Appellant that if he would agree to deposit the first year's payment he could be put in possession of the land in the event of Sabapathipillai vacating the land. He also admitted receipt of the Appellant's cheque and that the wording of the receipt was his. p. 70, l. 36.

10. Apart from the oral evidence, the receipt and the inferences to be drawn from the events preceding 4th March and the subsequent conduct of the parties, there were certain contemporaneous minutes of the 4th and 5th March. On the 4th March Attanayaka prepared a minute which was signed on that day by Mr. Chandrasoma to the Chena Surveyor stating: p. 66, l. 20.
20 "The lease is now given to Mr. E. Wijesuriya. You should put him in p. 177, l. 30.
possession of the land as soon as the present lessee vacates it." This minute p. 104, l. 16.
was written on the back of the office copy of the notice of cancellation to p. 176, l. 14.
Sabapathipillai. Below it certain minutes were entered passing between p. 177, l. 10.
Attanayaka and Mr. Chandrasoma regarding the acceptance of a year's rent from the Appellant and its being placed on deposit until the Appellant was put in possession of the land, when the money could be credited to Revenue Mr. Chandrasoma minuted that the Appellant should be asked if he agreed with this and on the 5th March Attanayaka minuted that the Appellant did agree.

30 11. It is submitted that of these minutes that to the ChenaSurveyor p. 177, l. 30.
strongly supports the Appellant's evidence. In the first place the minute contains no reference to any condition attaching to the grant of the lease to the Appellant. Secondly the minute strongly suggests that before signing it Mr. Chandrasoma must have seen the Appellant. No satisfactory alternative explanation of this minute was, it is submitted, given either by Mr. pp. 85-86.
Chandrasoma or by Attanayaka. pp. 66-68.
p. 179, l. 29.

12. On 10th March, 1943, the Land Commissioner wired the Government Agent that representations had been received against immediate cancellation of Sabapathipillai's permit and instructed him to defer action p. 181, l. 25.
40 and on 13th March, 1943, the Chena Surveyor informed the Appellant by letter that the notice served on Sabapathipillai had been cancelled and that the Appellant could not be put in possession on the 15th "as arranged." On

p. 181, l. 20. p. 108, l. 20. p. 190, l. 10. p. 186, l. 1.

12th March the Government Agent minuted Attanayaka that the Appellant's deposit be returned to him, but no step was taken to do this until 14th December, 1943. On 18th and 23rd March the Appellant respectively petitioned and wrote the Minister of Agriculture setting out his case to which he received a reply on 4th May stating that the Minister was not prepared to intervene, but not challenging the Appellant's statements.

p. 186, l. 20.

13. On 13th June, 1943, having obtained no redress, the Appellant wrote to the Government Agent stating " I am daily incurring heavy losses owing to your failure to give me the lease as promised " and threatening legal action.

p. 189, l. 1. p. 187, l. 18. p. 55, l. 36. p. 189, l. 20. p. 190, l. 31.

This letter was acknowledged on 5th July by a formal letter stating that the matter was awaiting the instructions of the Lord Commissioner. Moreover in minuting the Appellant's letter to the Government Agent, Mr. Chandrasoma did not suggest that the letter contained a false statement and admittedly never so informed his superior. Finally on 18th August, 1943, the Government Agent sent a long report to the Land Commissioner on the whole subject in which no mention was made that the Appellant was putting forward a false case and in the Report the Government Agent stated " Before giving possession to Wijesuriya it was necessary to accept the deposit of Rs.6,000 being one year's rent. It was not clear that there was any point at that time in my taking possession of the land from Sabapathipillai on behalf of the Crown and retaining it to any length of time before issuing the permit to Wijesuriya."

14. It is submitted that the conduct of the various Government Officials concerned after 4th March as summarized above is difficult to reconcile with the case made and evidence called at the trial on behalf of the Crown. In no communication from the various Government officials to the Appellant before action was the case made for the Crown at the trial ever stated and the last such communication, namely the letter of 14th December, 1943, merely said that " consideration of the grant of the lease has to await the result of the case instituted by Sabapathipillai against Karunatilleke."

p. 191, l. 18.

p. 97, l. 18. p. 99, ll. 14-20. p. 109, ll. 9-14. pp. 99-109.

15. In his Judgment delivered on 3rd November, 1944, the learned District Judge stated that there was no escape for him but to face the unpleasant task of deciding which of two directly conflicting stories was correct and he reached his conclusion that the Appellant's evidence was correct as to what was agreed between him and Mr. Chandrasoma on 4th March, 1943, after a careful examination and survey of the oral and documentary evidence as a whole.

pp. 109-113.

16. The learned Judge then dealt with the two main grounds on which it was argued on behalf of the Respondent that the agreement of 4th March, 1943, was unenforceable in law. The first of these dealt with was that the

Land Commissioner and the Government officials at Badulla had no authority to act as they did (a) by reason of regulation 2 of the Land Sale Regulations of 1926 which provided :— p. 134, ll. 20-24.

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" Every grant and every ~~base~~ of land shall be under the signature of the Governor and the Public Seal of the Colony."

and also (b) by reason of a similar provision in the Letters Patent of 1931, paragraph 6 of which provided :—

" The Governor in our name or on our behalf may make and execute, under the public seal of the Island grants and dispositions of any lands which may lawfully be granted or disposed of within the Island." p. 126, ll. 34-37.

17. On this point the learned Judge accepted the argument of the Appellant's Counsel that what was given to Sabapathipillai on 10th August, 1942, and what was agreed to be given to the Appellant on 4th March, 1943, was not a grant, lease or disposition of land but " merely a licence or permit to tap Crown rubber trees for latex," that the contrary view involved the startling conclusion that the Land Commissioner and the Government officials concerned had, with the knowledge of the Attorney-General, been acting ultra vires for a considerable time, and that the true view was that the Land Commissioner and the Government officials under him had acted within the provisions of the Land Development Ordinance, Chapter 320 (Legislative Enactments of Ceylon, Vol. 6, pages 611, 612), sub-section of 3(1)(b) of which provides that amongst the Land Commissioner's duties are " the general supervision and control of Government Agents and land officers in the administration of Crown land and in the exercise and discharge of the powers and duties conferred and imposed upon them by this Ordinance." The learned Judge therefore came to the conclusion that the various Government officials concerned were acting intra vires. pp. 112-113. p. 171. p. 111, l. 22. p. 111, ll. 16-19. p. 111, ll. 34-38. p. 112, l. 2.

18. The learned Judge next dealt with sections 2 and 17 of the Prevention of Frauds Ordinance. These sections provide as follows :—

" Section 2. No sale, purchase, transfer, assignment or mortgage of land or other immovable property, and no promise, bargain, contract or agreement for affecting any such object, or for establishing any security, interest, or incumbrance affecting land or other immovable property (other than a lease at will, or for any period not exceeding one month) nor any contract or agreement for the future sale or purchase of any land or other immovable property shall be of force or avail in law unless the same shall be in writing and signed by the party making the same, or by some person lawfully authorized by him or her in the presence of a licenced notary public and two or more witnesses present at the same time, and unless the execution of

such writing, deed, or instrument be duly attested by such notary and witnesses.

" Section 17. None of the foregoing provisions in this Ordinance shall be taken as applying to any grants, sales or other conveyances of land or other immovable property from or to Government, or to any mortgage of land or other immovable property made to Government or to any deed or instrument touching land or other immovable property to which Government shall be a party, or to any certificates of sales granted by fiscals of land or other immovable property sold under writs of execution."

p. 112, l. 13. p. 113, l. 4.

19. The learned Judge held that the right to tap for latex was obviously not " land " but came within the words " other immovable property " in section 2. He held, however, that in view of the terms of section 17 the Crown could not take advantage of the provisions of section 2.

p. 113, l. 45. p. 191, l. 10. p. 191, l. 20. p. 113, l. 41.

20. As regards the deposit and interest thereon the learned Judge held that the Appellant was entitled to recover the deposit of Rs.6,000 together with interest thereon at five per cent. from 15th March, 1943, until the date of the decree, namely 3rd November, 1944. He rejected the argument for the Respondent that interest should not run after 15th December, 1943, on the ground that the letter of 14th December, 1943 offering to return the deposit was conditional only and further made no offer to pay the nine months' interest then due.

p. 114. p. 114, ll. 7-9. p. 114, l. 15. p. 12, l. 26.

21. The learned Judge then proceeded to deal with the quantum of damage recoverable and stated that the Appellant was himself an expert rubber planter, had given evidence as to damages and that no contrary evidence had been led on behalf of the Crown. The learned Judge accepted the Appellant's evidence that the lands would have produced 85,000 lbs. of rubber per annum and proceeded to calculate on that basis the gross profit that the Appellant would have made between 15th March, 1943, and 15th October, 1944, the latter being a date during the trial of the action. The figures on which the Judge's calculations were based, which were taken from the Appellant's evidence, were as follows :—

p. 12, l. 28; p. 17, ll. 25-33; pp. 43, 44.

Period	*Prices of Rubber per lb.*	*Cost of tapping per lb.*	*Profit per lb.*	*Yield in lb.*	*Gross Profit in Rs.*
15/3/43 to 15/10/43	71 cents	30 cents	40 cents	49,000	19,600
15/10/43 to 11/2/44	84 cents	36 cents	45 cents	28,000	12,600
12/2/44 to 1/4/44	Rs. 1.05	40–45	65 cents	10,000	4,500
2/4/44 to 15/10/44	Rs. 1.05	40–45	65 cents	46,000	29,750

p. 114, l. 23.

The learned Judge then stated that the figures in the last column produced a grand total of Rs.61,450, whereas the correct figure should have

been Rs.66,450. From the figure of Rs.61,450 the Judge deducted Rs.4,250 on the cost of clearing the land, i.e. 170 acres at Rs.25 per acre, and two years' rent of Rs.12,000, producing a figure of net profit up to 15th October, 1944, of Rs.45,200. On the corrected figure of Rs.66,450 above the net profit for the period should, it is submitted, have been Rs.50,200. p. 17, l. 33.

22. As regards the period of 31½ months from 15th October, 1944, to 31st May, 1947, when the permit would have expired, the Appellant had claimed that half the profit allowed up to 15th October, 1944, should be awarded. The learned Judge allowed half the net profit figure for the period up to 15th October, 1944, namely Rs.22,600, but deducted from this three years' rent of Rs.18,000, thus producing a net profit of only Rs.4,600 for the 31½ months. He accordingly awarded Rs.45,200, together with Rs.4,600 or a total of Rs.49,800 as the damages recoverable. p. 119, l. 36. p. 114, l. 26. p. 114, l. 28.

23. It is respectfully submitted that the learned Judge was in error in deducting anything for future rent from Rs.22,600 since the latter was half of a sum in the ascertainment of which rent had already been taken into account. The learned Judge accordingly made in effect a double allowance against gross profit of the rent payable. If half of the corrected figure of Rs.50,200 be taken as the net profit for the 31½ months, namely Rs.25,100, that sum, together with Rs.50,200 for the period up to 15th October, 1944, would give a total figure for damages of Rs.75,300, or Rs.300 more than the figure claimed in the plaint. An alternative and, it is submitted, a more reliable basis for calculating the loss of future net profit from 15th October, 1944, to 31st May, 1947, would have been to have allowed half the net profit at 65 cents per lb. on the estimated yield for the period, less an allowance for rent. On this basis the final figure of estimated future damages would have been Rs.53,500 which, together with the sum awarded by the learned Judge for the earlier period, would have greatly exceeded the Rs.75,000 claimed. It is accordingly submitted that on either basis the learned Judge should have awarded the Appellant as damages the full sum claimed by him in his plaint, namely Rs.75,000.

24. The Respondent appealed to the Supreme Court of Ceylon and the grounds of appeal set out in his Petition included in paragraph 6 (iii) (*a*) the submission that the learned District Judge was wrong in holding that there was a concluded agreement between the Assistant Government Agent, Uva Province, and the Appellant. By his cross-appeal the Appellant submitted that the learned Judge had through an oversight made an error in estimating the future potential profits that would have been earned under the permit, and prayed that the damages awarded by the learned Judge be increased to Rs.75,000. p. 116. p. 118, l. 9. p. 119. p. 120, l. 17.

p. 120, l. 31.

25. Argument of the appeal took place and was completed on 1st March, 1946. As appears from the affidavit of Mr. F. C. W. Vangeyzel, sworn on 29th November, 1947, which, pursuant to leave by the Judicial Committee of the Privy Council given on 1st March, 1948, will be read at the hearing of this appeal, the course taken in the argument before the Supreme Court was as follows. After referring to the facts and issues of law involved, the Acting Attorney-General for the Respondent began to address arguments against the correctness of the findings of fact made by the District Judge. Very shortly thereafter he was asked by the Court whether the canvassing of the findings of fact of the trial Judge which were against him would be of any use and whether it would not be better for him to confine his argument to the legal issues involved. The Acting Attorney-General replied that he did not accept the District Judge's findings of fact as correct, but did not thereafter address any arguments on the facts and confined his address to the law. Counsel for the Appellant addressed the Supreme Court only on the law and the Acting Attorney-General's reply was similarly limited.

p. 120, l. 36.

26. Judgment of the Supreme Court was delivered by Acting Chief Justice Soertz on 22nd August, 1946, nearly six months after the hearing of the appeal, and, notwithstanding the course taken in the argument of the appeal and the fact that they had not heard any argument by Counsel for the Appellant on the issue of fact, the Supreme Court found against the Appellant not only on the law, but also on the facts as to the oral agreement sued upon

p. 133, l. 7.
p. 123, l. 24.
p. 177, ll. 10-26.
p. 177, l. 30.
p. 124, l. 16.
p. 124, ll. 20-23.

27. As regards the latter, the Acting Chief Justice preferred the evidence of Mr. Chandrasoma and Attanayaka to that of the Appellant and regarded the point in dispute as having being clinched by the minutes already referred to, numbered D1, between Mr. Chandrasoma and Attanayaka. The Acting Chief Justice dismissed the minute of 4th March (P. 13) from Mr. Chandrasoma to the Chena Surveyor, which the District Judge had thought conclusive, as not of " much importance " in its true context and as meaning on its proper interpretation that the Land Commissioner had decided to put the Appellant in possession on Sabapathipillai vacating the land, and not that he had agreed unconditionally to do so. No mention was made by the Acting Chief Justice of the evidence as to the conduct and communications of the various Government officials after the 4th March on which the District Judge had in part relied in reaching his conclusion that the Appellant's evidence was correct and which, it is submitted, are inconsistent or at least the difficult to reconcile with the oral evidence given on behalf of the Crown as to what took place on 4th March.

p. 66, l. 24.
p. 67, l. 3.

28. It is respectfully submitted that the Supreme Court were in error in the interpretation that they placed on P. 13 and the minutes numbered D1. Attanayaka admitted in cross-examination that he drafted P. 13 after seeing the Appellant and then submitted it to Mr. Chandrasoma. It is submitted that Attanayaka would not have used the language he did if he had in fact

informed the Appellant that the deposit was conditional and that the Appellant would only be entitled to a permit if and when Sabapathipillai vacated the lands. It is further submitted that Mr. Chandrasoma would not have signed P. 13 had he intended it, without amending it, to have only the limited effect ascribed to it by the Supreme Court, nor would he have done so had he not previously been aware from his interview with the Appellant that the latter agreed to take the rights in question on the basis of annual payments of Rs.6,000. The Respondent's case necessitates acceptance of the proposition that Mr. Chandrasoma signed a document stating that " the lease is now given to Mr. E. Wijesuriya " without having first ascertained that the latter would accept it and when on Mr. Chandrasoma's own evidence he had last discussed p. 86, l. 1. the matter with the Appellant in April, 1942. The minutes numbered D1 appear in the file below P. 13 and relate to an accounting detail raised by p. 104, l. 1. Attanayaka which it would have been unnecessary for him to raise had his previous conversation with the Appellant been on the lines contended for by the Respondent. It is submitted that the true explanation of the minutes numbered D1 is that given by the District Judge and that they do not detract p. 104, ll. 18-40. from the strong corroboration of the Appellant's evidence afforded by P. 13.

29. The Supreme Court then dealt with the legal position assuming that the Appellant's evidence as to the interviews of 4th March was correct, and held that the agreement was one for " a lease of land for four years and p. 125, l. 47. two and a half months." Accordingly the contract was one which by Regulation 2 of the Land Sale Regulations and paragraph 6 of the Letters Patent p. 126, ll. 20-38. had to be under the signature of the Governor, and neither the Lord Commissioner nor the Assistant Government Agent had authority to make the p. 127, l. 29. alleged agreement. The supreme Court further held, without giving any reasons, that the provisions of the Land Development Ordinance had no p. 127, l. 12. application. No mention was made by the Supreme Court of the Prevention of Frauds Ordinance. As regards the deposit of Rs.6,000, the Supreme Court p. 128, l. 8. affirmed the District Judge's order for the return of this sum, but limited the period in respect of which the Appellant was entitled to interest thereon p.128, ll. -51. to that between 10th March and 15th December, 1943, on the basis that the Appellant could, had he wished, have withdrawn the sum on the latter date. On the above findings of the Supreme Court the cross appeal did not arise and was dismissed.

30. It is respectfully submitted that the Supreme Court were mistaken in holding that the agreement of 4th March was for a lease of land. On their p. 164. true construction the original conditions of auction and the permit subsequently p. 171. granted to Sabapathipillai related it is submitted to no more than a licence or permit to tap rubber and remove the same from the lands in question and did not therefore come within the provisions of the Land Sale Regulations or the Letters Patent. The contrary view attaches insufficient weight to the words " permitted to take the produce of the plantations " in the operative part of the permit in question, which are it is submitted quite inconsistent

with the construction of the document as being a lease of land. The view, moreover, involves the conclusion that the numerous Government officials concerned were habitually acting *ultra vires* and in disregard of the law of Ceylon.

p. 130, l. 28.
p. 133, l. 23.

31. On 11th September, 1946, conditional leave to appeal to His Majesty in Council was given by the Supreme Court of Ceylon, and on 25th September, 1946, final leave to appeal was given by that Court.

32. The Appellant humbly submits that this appeal should be allowed, that the Decree of the Supreme Court of Ceylon should be set aside and that the Decree of the District Judge of Colombo should be restored, subject to the variation that the sum of damages to be paid by the Respondent to the Appellant should be increased from Rs.49,800 to Rs.75,000, for the following, amongst other

REASONS.

(1) BECAUSE the Assistant Government Agent, Uva Province, entered into an oral agreement with the Appellant on 4th March, 1943, on behalf of the Crown to grant the Appellant for a period of four years two and a half months from 15th March, 1943, the right to tap and take the produce of the rubber trees on the Keenapitiya Crown rubber lands in consideration of payments by the Appellant at the rate of Rs.6,000 per annum and because the Appellant made an initial deposit of Rs.6,000 thereunder.

(2) BECAUSE the said agreement was authorized by the Land Commissioner, Colombo.

(3) BECAUSE the said Land Commissioner and the said Assistant Government Agent had authority to make the said agreement.

(4) BECAUSE the said agreement did not relate to and was not a lease, grant or disposition of land.

(5) BECAUSE the Land Sale Regulations and Regulation 2 thereof and the Letters Patent of 1926 had no application to the said agreement.

(6) BECAUSE the Prevention of Frauds Ordinance, section 2, had no application to the said agreement.

(7) BECAUSE section 17 of the Prevention of Frauds Ordinance prevented the application to the said agreement of section 2 of the said Ordinance.

(8) BECAUSE the said agreement was valid and enforceable in law.

(9) BECAUSE the Crown repudiated the said agreement.

(10) BECAUSE on or about 10th March, 1943, the Crown cancelled the notice given to Sabapathipillai on 2nd March, 1943, and thereby put it out of their power to give effect to the said agreement or to the agreement admitted by them in evidence or to allow the Appellant to tap and take the said rubber on and after 15th March, 1943.

(11) BECAUSE the Appellant has by reason of the aforesaid action by the Crown suffered damages in a sum not less than Rs.75,000.

(12) BECAUSE the Judgment and Decree of the Supreme Court of Ceylon were wrong and should be reversed.

(13) BECAUSE the Supreme Court of Ceylon came to a conclusion on the facts contrary to that of the District Judge of Colombo without hearing argument thereon by Counsel for the Appellant.

(14) BECAUSE the Judgment and Decree of the District Judge of Colombo were (save as to the quantum of damages) right and should be restored, subject to the damages awarded being increased to Rs.75,000.

A. A. MOCATTA,

No. 75 of 1947

In the Privy Council

ON APPEAL

From the Supreme Court of Ceylon.

BETWEEN

H. E. WIJESURIYA

and

THE ATTORNEY-GENERAL OF CEYLON

Case for the Appellant.

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