



**No. 5,430—FRIDAY, OCTOBER 9, 1896.**

*Separate paging is given to each Part in order that it may be filed separately.*

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## NOTICES OF INSOLVENCY.

## In the District Court of Colombo.

No. 1,837. In the matter of the insolvency of Sellapperumage Deonis Fernando of Moratuwa.

WHEREAS the above-named Sellapperumage Deonis Fernando was on September 30, 1896, adjudged insolvent by the District Court of Colombo, and an order has been made by the said court placing the estate of the said insolvent under sequestration in the hands of the Fiscal: Notice thereof is hereby given to all concerned, and notice is also hereby given that the said court has appointed that two public sittings of the court will be held, to wit, on October 29, 1896, and November 12, 1896, for the said insolvent to surrender and conform, and for such other proceedings in the said matter as may then be competent under the Ordinance No. 7 of 1853, intituled "An Ordinance for the due collection, administration, and distribution of Insolvent Estates."

By order of court,  
H. E. DE SILVA,  
for Secretary.

Colombo, September 30, 1896.

No. 1,838. In the matter of the insolvency of Manuel Silva Wijayasinha of Colombo.

WHEREAS the above-named Manuel Silva Wijayasinha was on September 30, 1896, adjudged insolvent by the District Court of Colombo, and an order has been made by the said court placing the estate of the said insolvent under sequestration in the hands of the Fiscal: Notice thereof is hereby given to all concerned, and notice is also hereby given that the said court has appointed that two public sittings of the court will be held, to wit, on October 29, 1896, and November 12, 1896, for the said insolvent to surrender and conform, and for such other proceedings in the said matter as may then be competent under the Ordinance No. 7 of 1853, intituled "An Ordinance for the due collection, administration, and distribution of Insolvent Estates."

By order of court,  
H. E. DE SILVA,  
for Secretary.

Colombo, September 30, 1896.

No. 1,823. In the matter of the insolvency of Henry Henderson of Colombo.

NOTICE is hereby given that a meeting of the creditors of the above-named insolvent will take place at the sitting of this court on November 12, 1896, to accept a composition.

By order of court,  
H. E. DE SILVA,  
for Secretary.

## In the District Court of Kandy.

No. 1,252. In the matter of the insolvency of Seena Seyadu Mohamadu of Kandy.

NOTICE is hereby given that the second sitting in the above case is fixed for November 6, 1896.

By order of court,  
A. SANTIAGO,  
Secretary.

Kandy, October 6, 1896.

No. 1,373. In the matter of the insolvency of Veerappen Kangany of Kirinde estate in Gampola.

WHEREAS the above-named Veerappen Kangany of Kirinde estate in Gampola was on September 29, 1896, adjudged insolvent by the District Court of Kandy, and an order has been made by the said court placing the estate of the said insolvent under sequestration in the hands of the Fiscal: Notice thereof is hereby given to all concerned, and notice is also hereby given that the said court has appointed that two public sittings of the court will be held, to wit, on October 30, 1896, and on November 13, 1896, for the said insolvent to surrender and conform, and for such other proceedings in the said matter as may then be competent under the Ordinance No. 7 of 1853, intituled "An Ordinance for the due collection, administration, and distribution of Insolvent Estates."

By order of court,  
A. SANTIAGO,  
Secretary.

The 6th day of October, 1896.

## In the District Court of Galle.

No. 275. In the matter of the insolvency of Cader Tamby Ahamadu Bawa of Talapitiya.

NOTICE is hereby given that a public sitting of his court will take place on November 20, 1896, for the allowance to the above-named insolvent of his certificate of conformity, in terms of the 124th clause of the Ordinance No. 7 of 1853.

By order of court,  
JAMES KRAUSE,  
Secretary.

Galle, October 2, 1896.

## DRAFT ORDINANCES.

## MINUTE.

The following Draft of a proposed Ordinance is published for general information:—

An Ordinance for amending and codifying the Law relating to the sale of Goods.

Preamble.

WHEREAS it is expedient to amend and codify the law relating to the sale of goods: Be it therefore enacted by the Governor of Ceylon, by and with the advice and consent of the Legislative Council thereof, as follows:

## PART I.

## FORMATION OF THE CONTRACT.

*Contract of Sale.*

Sale and agreement to sell.

1 (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called "a sale"; but where the transfer of the property in the goods is to take place at a future time, or subject to some condition thereafter to be fulfilled, the contract is called "an agreement to sell."

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Capacity to buy and sell.

2 Capacity to buy and sell is regulated by the general law concerning capacity to contract and to transfer and acquire property.

Provided that where necessaries are sold and delivered to a minor, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

"Necessaries" in this section means goods suitable to the condition in life of such minor or other person, and to his actual requirements at the time of the sale and delivery.

*Formalities of the Contract.*

Contract of sale how made.

3 Subject to the provisions of this Ordinance and of any Ordinance in that behalf, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties.

Provided that nothing in this section shall affect the law relating to corporations.

No contract to be in force unless in writing and signed.

4 (1) A contract for the sale of any goods shall not be enforceable by action, unless the buyer shall accept part of the goods so sold and actually receive the same, or pay the price or a part thereof, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf.

(2) The provisions of this section apply to every such contract, notwithstanding that the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit, or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.

(3) There is an acceptance of goods within the meaning of this section when the buyer does any act in relation to the goods which recognizes a pre-existing contract of sale, whether there be an acceptance in performance of the contract or not.

*Subject-matter of Contract.*

Existing or  
future goods.

5 (1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract of sale, in this Ordinance called "future goods."

(2) There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

Goods which  
have perished.

6 Where there is a contract for the sale of specific goods and the goods without the knowledge of the seller have perished at the time when the contract is made, the contract is void.

Goods perishing  
before sale, but  
after agreement  
to sell.

7 Where there is an agreement to sell specific goods, and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is thereby avoided.

*The Price.*

Ascertainment  
of price.

8 (1) The price in a contract of sale may be fixed by the contract, or may be left to be fixed in manner thereby agreed, or may be determined by the course of dealing between the parties.

(2) Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Agreement to  
sell at valuation.

9 (1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and such third party cannot or does not make such valuation, the agreement is avoided; provided that if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain an action for damages against the party in fault.

*Conditions and Warranties.*

Stipulations as  
to time.

10 (1) Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

(2) In a contract of sale, "month" means *primâ facie* calendar month.

When condition  
to be treated as  
warranty.

11 (1) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition, or may elect to treat the breach of such condition as a breach of warranty, and not as a ground for treating the contract as repudiated.

(2) Whether a stipulation in a contract of sale is a condition the breach of which may give rise to a right to treat the contract as repudiated, or a warranty the breach of which may give rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated, depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

(3) Where a contract of sale is not severable, and the buyer has accepted the goods, or part thereof, or where the contract is for specific goods the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated, unless there be a term of the contract, expressed or implied, to that effect.

(4) Nothing in this section shall affect the case of any condition or warranty fulfilment of which is excused by law by reason of impossibility or otherwise.

Implied  
undertaking as  
to title, &c.

12 In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is—

- (1) An implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass.
- (2) An implied warranty that the buyer shall have and enjoy quiet possession of the goods.
- (3) An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made.

Sale by  
description.

13 Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and if the sale be by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

Implied  
conditions as to  
quality or fitness.

14 Subject to the provisions of this Ordinance and of any Ordinance in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:

- (1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose; provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.
- (2) Where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality; provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.
- (3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.
- (4) An express warranty or condition does not negative a warranty or condition implied by this Ordinance unless inconsistent therewith.

#### *Sale by Samples.*

15 (1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

(2) In the case of a contract for sale by sample—

- (a) There is an implied condition that the bulk shall correspond with the sample in quality.

- (b) There is an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
- (c) There is an implied condition that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

## PART II.

### EFFECTS OF THE CONTRACT.

#### *Transfer of Property as between Seller and Buyer.*

Goods must be ascertained.

16 Where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained.

Property passes when intended to pass.

17 (1) Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties, and the circumstances of the case.

Rules for ascertaining intention.

18 Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer :

*Rule 1.*—Where there is an unconditional contract for the sale of specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery or both be postponed.

*Rule 2.*—Where there is a contract for the sale of specific goods, and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing be done, and the buyer has notice thereof.

*Rule 3.*—Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test, or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing be done, and the buyer has notice thereof.

*Rule 4.*—When goods are delivered to the buyer on approval, or “on sale or return,” or other similar terms, the property therein passes to the buyer—

(a) When he signifies his approval or acceptance to the seller, or does any other act adopting the transaction.

(b) If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

*Rule 5.*—(1) Where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made.

- (2) Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

Reservation of  
right of disposal.

19 (1) Where there is a contract for the sale of specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to the buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

(2) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is *primâ facie* deemed to reserve the right of disposal.

(3) Where the seller of goods draws on the buyer for the price, and transmits the bill of exchange and bill of lading to the buyer together to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

Risk *primâ facie*  
passes with  
property.

20 Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.

Provided that where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regard any loss which might not have occurred but for such fault.

Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

#### *Transfer of Title.*

Sale by person  
not the owner.

21 (1) Subject to the provisions of this Ordinance, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

(2) Provided also that nothing in this Ordinance shall affect—

(a) The provisions of "The Factors Act," or any Imperial enactment, or any local Ordinance, enabling the apparent owner of goods to dispose of them as if he were the true owner thereof.

(b) The validity of any contract of sale under any statutory power of sale or upon the order of a court of competent jurisdiction.

Sale under  
voidable title

22 When the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the sellers' defect of title.

Re-vesting of property in stolen goods on conviction of offender.

23 (1) Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen re-vests in the person who was the owner of the goods, or his personal representative, notwithstanding any intermediate dealing with them.

(2) Notwithstanding any enactment to the contrary, where goods have been obtained by fraud or other wrongful means not amounting to theft, the property in such goods shall not re-vest in the person who was the owner of the goods, or his personal representative, by reason only of the conviction of the offender.

Seller or buyer in possession after sale.

24 (1) Where a person having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same.

(2) Where a person having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

(3) In this section the term "mercantile agent" shall mean a mercantile agent having in the customary course of his business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods.

Effect of writs of execution.

25 A writ of execution against goods shall bind the property in the goods of the execution-debtor as from the time when the writ is delivered to the fiscal to be executed; and, for the better manifestation of such time, it shall be the duty of the fiscal, without fee, upon the receipt of any such writ, to endorse upon the back thereof the hour, day, month, and year when he received the same.

Provided that no such writ shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he acquired his title notice that such writ or any other writ, by virtue of which the goods of the execution-debtor might be seized or attached, had been delivered to and remained unexecuted in the hands of the fiscal.

(2) In this section the term "fiscal" includes any officer charged with the enforcement of a writ of execution.

### PART III.

#### *Performance of the Contract.*

Duties of seller and buyer.

26 It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

Payment and delivery are concurrent conditions.

27 Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions; that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for possession of the goods.



Rules as to  
delivery.

28 (1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, the place of delivery is the seller's place of business, if he have one, and if not, his residence. Provided that, if the contract be for the sale of specific goods, which to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery.

(2) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf; provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

Delivery of  
wrong quantity.

29 (1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he must pay for them at the contract rate.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties.

Instalment  
deliveries.

30 (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2) Where there is a contract for the sale of goods to be delivered by stated instalments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract or whether it is a severable breach giving rise to a claim for compensation, but not to a right to treat the whole contract as repudiated.

Delivery to  
carrier.

31 (1) Where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, is *prima facie* deemed to be a delivery of the goods to the buyer.

(2) Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omits so to do, and the goods are lost or damaged in course

of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their sea transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such sea transit.

Risk where goods are delivered at distant places.

32 Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer must, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

Buyer's right of examining the goods.

33 (1) Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

Acceptance.

34 The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when after the lapse of a reasonable time he retains the goods without intimating to the seller that he has rejected them.

Buyer not bound to return rejected goods.

35 Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

Liability of buyer for neglecting or refusing delivery of goods.

36 When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

#### PART IV.

##### *Rights of Unpaid Seller against the Goods.*

Unpaid seller defined.

37 (1) The seller of goods is deemed to be an "unpaid seller" within the meaning of this Ordinance—

- (a) When the whole of the price has not been paid or tendered;
- (b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) In this part of this Ordinance the term "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

Unpaid seller's  
rights.

38 (1) Subject to the provisions of this Ordinance, and of any Ordinance in that behalf, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law—

- (a) A lien on the goods or right to retain them for the price while he is in possession of them.
- (b) In case of the insolvency of the buyer, a right of stopping the goods *in transitu* after he has parted with the possession of them.
- (c) A right of re-sale as limited by this Ordinance.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage *in transitu* where the property has passed to the buyer.

*Unpaid Seller's lien.*

Seller's lien.

39 (1) Subject to the provisions of this Ordinance, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely :

- (a) Where the goods have been sold without any stipulation as to credit ;
- (b) Where the goods have been sold on credit, but the term of credit has expired ;
- (c) Where the buyer becomes insolvent.

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

Part delivery.

40 Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien or retention on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien or right of retention.

Termination of  
lien.

41 (1) The unpaid seller of goods loses his lien or right of retention thereon—

- (a) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.
- (b) When the buyer or his agent lawfully obtains possession of the goods.
- (c) By waiver thereof.

(2) The unpaid seller of goods, having a lien or right of retention thereon, does not lose his lien or right of retention by reason only that he has obtained judgment or decree for the price of the goods.

*Stoppage in transitu.*

Right of  
stoppage *in*  
*transitu*.

42 Subject to the provisions of this Ordinance, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them *in transitu*; that is to say, he may resume possession of the goods as long as they are in course of transit, and may retain them until payment or tender of the price.

Duration of  
transit.

43 (1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land or water, or other bailee for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee.

(2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

(3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent, that he holds the goods on his behalf, and continues in possession of them as bailee for the buyer, or his agent, the transit is at an end, and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(4) If the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them, the transit is not deemed to be at an end even if the seller has refused to receive them back.

(5) When goods are delivered to a ship chartered by the buyer it is a question depending on the circumstances of the particular case whether they are in possession of the master as a carrier or as agent to the buyer.

(6) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf, the transit is deemed at an end.

(7) Where part delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped *in transitu* unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods.

How stoppage  
*in transitu* is  
effected.

44 (1) The unpaid seller may exercise his right of stoppage *in transitu* either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice to be effectual must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

(2) When notice of stoppage *in transitu* is given by the seller to the carrier, or other bailee in possession of the goods, he must re-deliver the goods to, or according to the directions of, the seller. The expenses of such re-delivery must be borne by the seller.

#### *Re-sale by Buyer or Seller.*

Effect of  
sub-sale or  
pledge by buyer.

45 Subject to the provisions of this Ordinance, the unpaid seller's right of lien or retention or stoppage *in transitu* is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto.

Provided that where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, then, if such last-mentioned transfer was by way of sale, the unpaid seller's right of lien or retention or stoppage *in transitu* is defeated, and if such last-mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or retention or stoppage *in transitu* can only be exercised subject to the rights of the transferee.

Sale not  
generally  
rescinded by  
lien or stoppage  
*in transitu*.

46 (1) Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or retention or stoppage *in transitu*.

(2) Where an unpaid seller who has exercised his right of lien or retention or stoppage *in transitu* re-sells the goods the buyer acquires a good title thereto as against the original buyer.

(3) Where the goods are of a perishable nature, or where the unpaid seller gives notice to the buyer of his intention to re-sell, and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may re-sell the goods and recover from the original buyer damages for any loss occasioned by his breach of contract.

(4) Where the seller expressly reserves a right of re-sale in case the buyer should make default, and on the buyer making default re-sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim the seller may have for damages.

#### PART V.

#### ACTIONS FOR BREACH OF THE CONTRACT.

##### *Remedies of the Seller.*

Action price.

47 (1) Where, under a contract of sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him for the price of the goods.

(2) Where, under a contract of sale, the price is payable on a day certain irrespective of delivery, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to the contract.

Damages for non-acceptance.

48 (1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

(3) Where there is an available market for the goods in question the measure of damages is *primâ facie* to be ascertained by the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept.

##### *Remedies of the Buyer.*

Damages for non-delivery.

49 (1) Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract.

(3) Where there is an available market for the goods in question, the measure of damages is *primâ facie* to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver.

Specific performance.

50 In any action for breach of contract to deliver specific or ascertained goods the court may, if it thinks fit, on the application of the plaintiff, by its judgment or decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price, and otherwise, as to the court may seem just. And the application by the plaintiff may be made at any time before judgment or decree.

Remedy for breach of warranty.

51 (1) Where there is a breach of warranty by the seller, or where the buyer elects, or is compelled, to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may—

(a) Set up against the seller the breach of warranty in diminution or extinction of the price; or

(b) Maintain an action against the seller for damages for the breach of warranty.

(2) The measure of damages for breach of warranty is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

(3) In the case of breach of warranty of quality such loss is *prima facie* the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.

(4) The fact that the buyer has set up the breach of warranty in diminution or extinction of the price does not prevent him from maintaining an action for the same breach of warranty if he has suffered further damage.

Interest and  
special damages.

52 Nothing in this Ordinance shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.

## PART VI.

### *Supplementary.*

Exclusion of  
implied terms  
and conditions.

53 Where any right, duty, or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage be such as to bind both parties to the contract.

Reasonable  
time a question  
of fact.

54 Where by this Ordinance any reference is made to a reasonable time, the question what is a reasonable time is a question of fact.

Rights, &c.,  
enforceable by  
action.

55 Where any right, duty, or liability is declared by this Ordinance, it may, unless otherwise by this Ordinance provided, be enforced by action.

Auction sales.

56 In the case of a sale by auction—

- (1) Where goods are put up for sale by auction in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale.
- (2) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner. Until such announcement is made any bidder may retract his bid.
- (3) Where a sale by auction is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person. Any sale contravening this rule may be treated as fraudulent by the buyer.
- (4) A sale by auction may be notified to be subject to a reserved or upset price, and a right to bid may also be reserved expressly by or on behalf of the seller.

Where a right to bid is expressly reserved, but not otherwise, the seller, or any one person on his behalf, may bid at the auction.

Repeal.

57 Sub-section 3 of section 25 of the Ordinance No. 7 of 1840 is hereby repealed: Provided that such repeal shall not affect anything done or suffered, or any right, title, or interest acquired or accrued before the commencement of this Ordinance or any legal proceeding or remedy in respect of any such thing, right, title, or interest.

Savings.

58 (1) The rules in insolvency relating to contracts of sale shall continue to apply thereto, notwithstanding anything in this Ordinance contained.

(2) The rules of the English law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Ordinance, and in particular the rules relating to the law of principal and agent and the effect of fraud, misrepresentation, duress, or coercion, mistake, or other invalidating cause, shall apply to contracts for the sale of goods.

(3) The provisions of this Ordinance relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge, or other security.

(4) Nothing in this Ordinance shall prejudice or affect the landlord's right of hypothec or lien for rent.

Interpretation of terms.

59 In this Ordinance, unless the context or subject-matter otherwise requires—

“Action” includes claim in reconvention.

“Buyer” means a person who buys or agrees to buy goods.

“Contract of sale” includes an agreement to sell as well as a sale.

“Delivery” means voluntary transfer of possession from one person to another.

“Document of title to goods” includes any bill of lading, dock warrant, warehouse-keeper's certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or delivery, the possessor of the document, to transfer or receive goods thereby represented.

“Factors Act” means the Act of the Imperial Parliament, 52 and 53, Vict. cap. 45.

“Fault” means wrongful act or default.

“Future goods” means goods to be manufactured or acquired by the seller after the making of the contract of sale.

“Goods” includes all movables except moneys. The term includes growing crops and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

“Lien” includes the right of detention.

“Plaintiff” includes the defendant claiming in reconvention.

“Property” means the general property in goods and not merely a special property.

“Quality of goods” includes their state or condition.

“Sale” includes a bargain and sale, as well as a sale and delivery.

“Seller” means a person who sells or agrees to sell goods.

“Specific goods” mean goods identified and agreed upon at the time a contract of sale is made.

“Warranty” means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not a right to reject the goods and treat the contract as repudiated.

(2) A thing is deemed to be done “in good faith” within the meaning of this Ordinance when it is in fact done honestly, whether it be done negligently or not.

(3) A person is deemed to be insolvent within the meaning of this Ordinance, who either has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not, and whether he has become an insolvent or not.

(4) Goods are in a “deliverable state” within the meaning of this Ordinance when they are in such a state that the buyer would under the contract be bound to take delivery of them.

Commencement.

60 This Ordinance shall come into operation on the First day of January, 1897.

Short title.

61 This Ordinance may be cited as “The Sale of Goods Ordinance, 1896.”

By His Excellency the Governor's command,

Colonial Secretary's Office,  
Colombo, October 7, 1896.

W. T. TAYLOR,  
Acting Colonial Secretary.

## NOTICES IN TESTAMENTARY ACTIONS.

In the District Court of Colombo.

*Order Nisi.*

Testamentary Jurisdiction. { In the Matter of the Estate of the late Deekirikawage Don Abilinu Appu of Kandana in the Ragam pattu of the Alutkuru korale, deceased.

THIS matter coming on for disposal before J. H. Templer, Esq., Acting District Judge of Colombo, on the 17th day of September, 1896, in the presence of Edward Wilfred Perera, Proctor, on the part of the petitioner Welgamage Dona Isabella Hamy of Kandana in the Ragam pattu of the Alutkuru korale; and the affidavit of the said Welgamage Dona Isabella Hamy, dated the 7th day of September, 1896, having been read :

It is ordered that the said Welgamage Dona Isabella Hamy be, and she is hereby declared entitled to have letters of administration to the estate of Deekirikawage Don Abilinu Appu, deceased, issued to her, as the widow of the said deceased, unless the respondents, viz., 1, Deekirikawage Dona Dorthina Hamy; 2, Deekirikawage Dona Siadorina Hamy; 3, Deekirikawage Dona Eugenia Hamy; 4, Deekirikawage Don Orginia Hamy; and 5, Deekirikawage Don Sipiliannu, all of Kandana aforesaid, shall, on or before the 15th day of October, 1896, show sufficient cause to the satisfaction of this court to the contrary.

J. H. TEMPLER,  
Acting District Judge.

The 17th day of September, 1896.

In the District Court of Kalutara.

*Order Nisi.*

Testamentary Jurisdiction. { In the Matter of the Last Will and Testament of the late Eradis de Silva Guneratne, Notary, deceased, of Kalamulla.

THIS matter coming on for disposal before S. Haughton, Esq., Acting District Judge of Kalutara, on the 23rd day of September, 1896, in the presence of Mr. H. S. Jayawickrama, Proctor, on the part of the petitioners Philip Benjamin de Silva Guneratne and Martinus Christopher de Silva Guneratne; and the affidavit of the said petitioners, the notary attesting the will, and the witnesses, dated 14th September, 1896, having been read : It is ordered that the will of the late Eradis de Silva Guneratne, deceased, dated 27th day of January, 1896, and now deposited in this court, be and the same is hereby declared proved.

It is further declared that the said Philip Benjamin de Silva Guneratne and Martinus Christopher de Silva Guneratne are the executors named in the said will, and that they are entitled to have probate of the same issued to them accordingly, unless the respondents—1, Bastiana de Silva Guneratne, widow of the late Baron Mendis Amarasekera of Kalamulla; 2, Carlina de Silva Guneratne and her husband 3, Aron de Abrew Wijesinghe, both of Kalamulla; 4, Theadora de Silva Guneratne and her husband 5, Theodor de Abrew Rajapakse, both of Kalamulla; 6, Marsalina de Silva Guneratne and her husband 7, Arnolis de Abrew Wijesinghe, Notary of Hakmane in Kandaboda pattu, Matara; 8, Adrian de Silva Guneratne of Galle; 9, Charles Justin de Silva Guneratne of Kalamulla; 10, Lovisa Cornelia de Silva Guneratne and her husband 11, Girigoris de Silva Karunaratne, both of Kalamulla; 12, Dedrick Mendis de Silva Guneratne of Kalamulla, a minor by his guardian *ad litem* Theodor de Abrew Rajapakse of Kalamulla—shall, on or before the 30th day of October, 1896, show sufficient cause to the satisfaction of this court to the contrary.

S. HAUGHTON,  
District Judge.

The 23rd day of September, 1896.

In the District Court of Kandy.

*Order Nisi.*

Testamentary Jurisdiction. { In the Matter of the Estate of the late Hettihewage Siman Appu, deceased, of Matale.

THIS matter coming on for disposal before John Henricus de Saram, Esq., District Judge of Kandy, on the 4th day of September, 1896, in the presence of Mr. C. Vanderwall, Proctor, on the part of the petitioners Hettihewage Angohami and Appu Hannedige Don Bastian de Silva, both of Matale; and the affidavit of the first named petitioner, Hettihewage Angohami, dated the 26th August, 1896, having been read. It is ordered that the second petitioner, Appu Hannedige Don Bastian de Silva, is entitled to have letters of administration to the estate of the late Hettihewage Siman Appu, deceased, issued to him, as the son-in-law of the deceased, unless the respondents, Hettihewage Selestina Hami, Punchi Singho, and Helena Hami, all of Matale, shall, on or before the 16th day of October, 1896, show sufficient cause to the satisfaction of this court to the contrary.

J. H. DE SARAM,  
District Judge.

The 4th day of September, 1896.

In the District Court of Kandy.

*Order Nisi.*

Testamentary Jurisdiction. { In the Matter of the Estate of the late Hettiarachchige Carolis Preira Appuhamy, deceased, of Gampola.

THIS matter coming on for disposal before John Henricus de Saram, Esq., District Judge of Kandy, on the 4th day of September, 1896, in the presence of Mr. C. Vanderwall, Proctor, on the part of the petitioner Hettiarachchige Katchi Nona Hamine, of Kandy street in Gampola; and the affidavit of the said petitioner, dated the 3rd September, 1896, having been read :

It is ordered that the said Hettiarachchige Katchi Nona Hamine is entitled to have letters of administration to the estate of the said deceased issued to her as the widow of the said deceased, Hettiarachchige Carolis Preira Appuhami, unless the respondents Hettiarachchige William Preira, overseer, of Madulkele; Hettiarachchige John Preira and Charles Preira, of Gampola; and Hettiarachchige Henrie Preira, of Udagama in Atabage, shall, on or before the 16th October, 1896, show sufficient cause to the satisfaction of this court to the contrary.

J. H. DE SARAM,  
District Judge.

The 4th day of September, 1896.

In the District Court of Kandy.

*Order Nisi.*

Testamentary Jurisdiction. { In the Matter of the Sinhalapedigedara Siripina of Giraulla in Ganga Ihala Korale of Udalapala, deceased.

Between

Meetalawwe Tikka Dureyalagedara Ukku  
of Giraulla aforesaid.....Petitioner

And

Deewala Marasinpedigedara Setu, residing  
at Sinhalapedigedara in Giraulla aforesaid..Respondent.

THIS matter coming on for disposal before John Henricus de Saram, Esq., District Judge of Kandy, on the 10th day of September, 1896, in the presence of Mr. C. Jayetileka, Proctor, on the part of the petitioner Meetalawwe Tikka Dureyalagedara Ukku of Giraulla aforesaid; and the affidavit of the said petitioner, dated 10th September, 1896, having been read :



It is ordered that the said petitioner, Meetalawwe Tikka Dureyalagedara Ukku, is entitled to have letters of administration to the estate of the deceased above-named issued to her, as the mother of the said Sinhlapedigedara Siripina, deceased, unless the respondent, Deewala Marasinpedigedara Setu of Sinhlapedigedara in Giraula aforesaid, shall, on or before the 16th day of October, 1896, show sufficient cause to the satisfaction of this court to the contrary.

J. H. DE SARAM,  
The 10th day of September, 1896. District Judge.

In the District Court of Jaffna.

*Order Nisi.*

Testamentary Jurisdiction. } In the Matter of the Last Will of the late Chultan Chikkawter Mohammedo Meera Lebbai of Vannarponnai, deceased.

Chultan Chikkantar Naina Marakkair, of Vannarponnai.....Petitioner.

And

1, Muhamadu Uchan Nachchiya, widow of Chultan Chikkantar Mohammedo Meera Lebbai of Vannarponnai; 2, Meyatheenkandu Mohammedo Mathar of Vannarponnai and his wife 3, Seynampu Nachchiya of Vannarponnai.....Respondents.

THIS matter of the petition of the above-named petitioner Chultan Chikkantar Naina Marakkair of Vannarponnai, praying for letters of administration, with copy of the last will of the late Chultan Chikkantar Mohammedo Meera Lebbai annexed thereto, coming on for disposal before H. Hay Cameron, Esq., District Judge, on the 11th day of August, 1896, in the presence of Messrs. Casippillai & Cathiravelu, Proctors, on the part of the petitioner; and the affidavit of the petitioner and the evidence of the witnesses to the last will, such affidavit being dated the 29th day of July, 1896, having been read: It is ordered that the will of the late Chultan Chikkantar Mohammedo Meera Lebbai, dated the 11th day of January, 1896, now deposited in this court, be and the same is hereby declared proved, unless the above-named respondents or any other person shall, on or before the 7th day of December, 1896, show sufficient cause to the contrary.

It is further declared that no executor having been appointed by the said will, the petitioner is entitled to have letters of administration to the estate of the said intestate with the copy of the said will annexed issued to him accordingly.

H. H. CAMERON,  
The 11th day of August, 1896. District Judge.

In the District Court of Jaffna.

*Order Nisi.*

Testamentary Jurisdiction. } In the Matter of the Estate of the late Chanti, daughter of Kantan, of Puttoor, deceased.

Kantan Vairavan, of Puttoor .....Petitioner.

Vs.

1, Pattan Kanthan and his wife 2, Putial, of Puttoor .....Respondents.

THIS matter of the petition of Kantan Vairavan of Puttoor, praying for letters of administration to the estate of the above-named deceased Chanti, daughter of Kantan of Puttoor, coming on for disposal before H. H. Cameron, Esq., District Judge, on the 14th day of September, 1896, in the presence of Messrs. Casippillai and Cathiravelu, Proctors, on the part of the petitioner; and the affidavit of the petitioner dated the 10th day of August, 1896, having been read: It is declared that the petitioner is the brother of the said intestate, and is entitled to have letters of administration to the estate of the said intestate issued to him, unless the respondents or any other person shall, on or before the 20th day of October, 1896, show sufficient cause to the satisfaction of this court to the contrary.

H. H. CAMERON,  
District Judge.

In the District Court of Jaffna.

*Order Nisi.*

Testamentary Jurisdiction. } In the Matter of the Estate of the late Kanmanippillai, wife of Arumukam Chellappa, late of Narantanai, deceased.

Arumukam Chellappa of Karampan.....Petitioner.

Vs.

1, Vichuwanatar Chivasitamparam and his wife 2, Valliammai; 3, Chivakkoluntu, daughter of Chivasitamparam, all of Narantanai .....Respondents.

THIS matter of the petition of Arumukam Chellappa of Karampan, praying for letters of administration to the estate of the above-named deceased, Kanmanippillai, wife of Arumukam Chellappa, coming on for disposal before H. H. Cameron, Esq., District Judge, on the 17th day of September, 1896, in the presence of Mr. T. C. Changarapillai, Proctor, on the part of the petitioner; and the affidavit of the petitioner, dated the 21st day of August, 1896, having been read: It is declared that the petitioner is the widower of the said intestate, and as such is entitled to have letters of administration to the estate of the said intestate issued to him, unless the respondents or any other person shall, on or before the 28th day of October, 1896, show sufficient cause to the satisfaction of this court to the contrary.

H. H. CAMERON,  
District Judge.

This 17th day of September, 1896.

In the District Court of Galle.

*Order Nisi.*

Testamentary Jurisdiction. } In the Matter of the Last Will and Testament of Ana Lana Suna Suppramanian Chetty, deceased, of Karakkudy in India.

THIS matter coming on for disposal before F. J. de Livera, Esq., District Judge of Galle, on the 18th day of September, 1896, in the presence of Mr. W. E. Weerasooriya, Proctor, on the part of the petitioner Ana Lana Suna Alagappa Chetty of India, presently of Galle; and the affidavit of Ana Lana Suna Alagappa Chetty of India, dated 15th September, 1896, having been read:

It is ordered that the will of Ana Lana Suna Suppramanian Chetty, deceased, dated 18th April, 1894, and now deposited in this court, be and the same is hereby declared proved.

It is further declared that the said Ana Lana Suna Alagappa Chetty, of India, presently of Galle, is the executor named in the said will, and that he is as such entitled to have probate of the same issued to him accordingly, unless any person shall, on or before the 27th day of October, 1896, show sufficient cause to the satisfaction of this court to the contrary.

F. J. DE LIVERA,  
District Judge.

The 18th day of September, 1896.

In the District Court of Chilaw.

Testamentary Jurisdiction. } In the Matter of the Estate of Mapa Wijesinha Appuhami, Vidanarala of Muttibendivila.

Mapa Wijesinha Appusinnu Appuhami, Police Headman, of Muttibendivila.....Petitioner.

And

1, Mapa Wijesinha Baron Sinno Appuhami Vel-Vidanarala, of Muttibendivila; 2, Mapa Wijesinha Menikhami, wife of Don Allis Appuhami Wedarala, of Haldanduwana; 3, Mapa Wijesinha Widihami of Tulawela, wife of Kandappu Hami Gamarala; 4, Mapa Wijesinha Jangohami of Kudiripuw.....Respondents.

THIS matter coming on for disposal before B. Constantine, Esq., District Judge of Chilaw, on the

27th day of September, 1896, in the presence of Mr. J. Lemphers on the part of the petitioner, and the affidavit and petition of Mapa Wijesinha Appusinho Appuhami, police headman, dated 11th September, 1896, having been read: It is declared that the said petitioner Mapa Wijesinha Appusinho Appuhami is entitled to have letters of administration to the estate of the late Mapa Wijesinha Appuhami, Vidanarala, of Muttibendivila issued to him accordingly, unless sufficient cause be shown by the respondents on the 28th day of October, 1896.

B. CONSTANTINE,

The 27th day of September, 1896. District Judge.

In the District Court of Badulla.

*Order Nisi.*

B/86. In the Matter of the Intestate Estate of Abayasinha Mudiyansele Mahagedara Vidane, late of Katugaha, deceased.

THIS matter coming on for disposal before J. G. Fraser, Esq., District Judge of Badulla, on the 14th day of September, 1896, in the presence of Abayasinha Mudiyansele Mahagedara Ukku Banda of Katugaha; and the petition and affidavit of the said Abayasinha Mudiyansele Mahagedara Ukku Banda, dated 14th day of September, 1896, having been read: It is ordered that the said Abayasinha Mudiyansele Mahagedara Ukku Banda be and he is hereby declared entitled to have letters of administration to the estate of the deceased Abayasinha Mudiyansele Mahagedara Ukku Banda issued to him, unless any person or persons shall, on or before the 27th day of October, 1896, show sufficient cause to the contrary.

J. G. FRASER,  
District Judge.

The 14th day of September, 1896.

In the District Court of Badulla.

*Order Nisi.*

B/88. In the Matter of the Intestate Estate of Kinnarabove Rajakaruna Anawalangu Mudiyansele Jayawardana Heen Appu, deceased.

THIS matter coming on for disposal before J. G. Fraser, Esq., District Judge of Badulla, on the 29th day of September, 1896, in the presence of Kinnarabove Rajakaruna Anawalangu Mudiyansele Jayawardana Sudu Banda of Kinnarabove; and the petition and affidavit of the said Sudu Banda, dated the 29th day of September, 1896, having been read: It is ordered that the said Kinnarabove Rajakaruna Anawalangu Mudiyansele Jayawardana Sudu Banda be and he is hereby declared entitled to have letters of administration to the estate of the deceased Kinnarabove Rajakaruna Anawalangu Mudiyansele Jayawardana Heen Appu issued to him, unless (1) Pubbare Siriwardana Bandara Nayaka Herat Mudiyansele Sudu Menika Kumari Hamy; (2) Kinnarabove Rajakaruna Anawalangu Mudiyansele Mutu Menika of Pattipola; (3) Kinnarabove Rajakaruna Anawalangu Mudiyansele Heen Kumarihamy of Mudi-ela in Wegam pattu; (4) do. deceased Bandara Menika's children: (a) Heen Menika, (b) Hudu Bandara Menika, (c) Sudu Kumarihami, (d) Loku Menika, (e) Mutu Menika, (f) Charles Banda, shall, on or before the 28th day of October, 1896, show sufficient cause to the contrary.

J. G. FRASER,  
District Judge.

The 29th September, 1896

## NOTICES OF FISCALS' SALES.

## Central Province.

In the District Court of Colombo.

William Lumsden Strachan, of Kandy ..... Plaintiff.

No. C/8,957. Vs.

1, William Albert Theobald ; and 2, Frederick Charles Theobald, both of Shannon estate, Hatton.....Defendants.

NOTICE is hereby given that on October 30, 1896, at 12 o'clock noon, will be sold by public auction at the Fiscal's Office, Kandy, the following property, viz. :—

All that estate called and known as Alluta, comprising all those four allotments of land called Ellotuwa, situated in the village Polwatta in the Pallepallata of Tumpane, Central Province; bounded on the east by land described in plan 102,240, Dimbulamadakanda (trigonometrical station), and land claimed by villagers, on the south by land also claimed by villagers, on the west by land described in plan 62,846, by land claimed by natives, and by Hindu-ragalla (trigonometrical station), and on the north by land claimed by villagers, containing in extent 503 acres and 32 square perches as per plan of survey made by Mr. J. E. Rodrigues, dated May 14, 1878, exclusive of about 103 acres consisting of paddy fields, gardens, arembes, and chenas around the paddy fields and watercourses, and which said land comprises the following allotments :—

1. All that piece of land called Ellotuwa, situate in the village Polwatta aforesaid; bounded on the north-west and north by a watercourse, on the east and south by land described in plan 103,546, and on the west by a water-course and by land claimed by Punchirala and others, containing in extent 3 acres 2 roods and 32 perches according to the figure of survey 103,540, dated March 23, 1876, authenticated by Colonel A. B. Fyers, Surveyor-General.

2. A piece of land called Dimbulamadahena, situate at Polwatta aforesaid; bounded on the north-east by land claimed by villagers and land described in plan 102,240, and on the south-east by land claimed by villagers, on the south-west by land described in plan 103,546, land claimed by E. Kalu Etena and others and water-course, and on the north-west by water-course and land claimed by villagers, containing in extent 155 acres according to the figure of survey 103,544, dated March 23, 1876, authenticated by Colonel A. B. Fyers, Surveyor-General.

3. A piece of land situated at Polwatta aforesaid; bounded on the north by land claimed by natives, on the north-east by a water-course and land described in plan 103,544, on the south-east by land claimed by natives and a water-course, on the south by land claimed by P. Appu, water-course, and land claimed by natives, on the west by land claimed by natives, water-course, land described in plans 103,540, 103,460, and 62,846, and land purchased by A. Ranhamy, and on the north-west by land claimed by natives and described in plan 99,930, containing in extent 299 acres, according to the figure of survey 103,546, dated March 23, 1876, authenticated by Colonel A. B. Fyers, Surveyor-General.

4. A piece of land called Immogalakele, situate at Polwatta aforesaid; bounded on the north-east by land described in plan 103,546, on the east by land described in plan 103,546, and land claimed by Punchirala and others, on the south-east by land claimed by Punchirala and others and water-course, on the south by land claimed by C. P. Rala and P. Etena and land claimed by natives, and on all other sides land claimed by natives, containing in extent 45 acres and 2 square roods according to the figure of survey 103,460, dated March 16, 1875, authenticated by the said Colonel A. B. Fyers, Surveyor-General, now comprised in and demised by all that indenture of lease 1,749, dated August 15, 1894, attested by E. L. Siebel, of Kandy, Notary Public, and entered into between Ratwatte Wijewardene Senewiratna Pandita Abeyakoon Bandaranayaka Wasala Mudiyansele Paranagama Abeyaratne

Basnayaka Nilame, and Ratwatte Wijewardena Senewiratna Pandita Abayekoon Bandaranayaka Wasala Mudiyansele Paranagama Senewiratne Ratemahatmaya as lessors, and William Albert Theobald and Frederick Charles Theobald, the defendants above-named as lessees for all the residue now unexpired of the term of 30 years granted in and by the said indenture of lease 1,749 of August 15, 1894, and all the right, title, and interest, claim, and demand whatsoever of the defendants in and to the said lands, indenture of lease and premises, specially assigned and set over by way of mortgage to the plaintiff by the defendants by a bond dated September 10, 1895, and declared by the judgment entered in the above case to be sold in satisfaction of the claim of the plaintiff.

Amount of writ, Rs. 1,500.

Fiscal's Office, C. S. VAUGHAN,  
Kandy, October 5, 1896. Fiscal.

In the District Court of Kandy.

Moona Kana Roona Carpen Chetty of Matala...Plaintiff.

No. 10,804. Vs.

1, Ponnamma; and 2, Kuppaamma of Pilapattia in Matala.....Defendants.

NOTICE is hereby given that on October 30, 1896, at 12 o'clock noon, will be sold by public auction at the premises the following property of the defendants, viz. :—

The land called Sinna Lebbegeewatta *alias* hena, of about 120 acres in extent, situate at Pamunuwa in Udasia pattu, Asgiri korale of Matala; bounded on the east by Crown property and Puwakgollehena and the limits of the lands belonging to other parties, on the south by Godahelayhena and the limits of the lands belonging to other parties, on the west by the limit of Polwattehena, and on the north by Hatarakoralegedarahena and Kanan-gomuwaredahena and the limits of the lands belonging to other parties.

Amount of writ, Rs. 407-33.

Fiscal's Office, C. S. VAUGHAN,  
Kandy, October 5, 1896. Fiscal.

In the District Court of Kandy.

Marapone Ekanayake Panditasundera Rajakarunaratna Wasala Mudiyansele Ralahamillage Tikiri Kumarihamy, of Mawatugama in Gandahe korale, of Wellihatpattu in the district of Kurunegala, administratrix of the estate of James Henry Girihaagama, deceased.....Plaintiff.

No. 10,271. Vs.

1, Girihaagama Walawwe Dingiri Banda, Notary; 2, Girihaagama Wahala Herat Mudiyansele Mutu Menika *alias* Bandara Menika; and 3, Girihaagama Walawwe Kiri Banda, all of Girihaagama in Medasiyapattu of Harispattu.....Defendants.

NOTICE is hereby given that on October 30, 1896, at 12 o'clock noon, will be sold by public auction at the premises the following property of the defendants, viz. :—

The undivided two-third shares out of the house and ground bearing assessment No. 73, containing in extent 14-84 perches; bounded on the east by Crown property (Pavilion ground), on the south by the house belonging to Mrs. Drieberg, on the west by Trincomalee street, on the north by the portion belonging to Rambukwella Walawwe, situate at Trincomalee street in the town of Kandy.

Amount of writ Rs. 313-30.

Fiscal's Office, C. S. VAUGHAN,  
Kandy, October 6, 1896. Fiscal.

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## North-Western Province.

In the District Court of Kurunegala.

Kuna Mana Periya Carpen Chetty and his brother and partner Kuna Mana Muttu Ramen Chetty, by their attorney Muna Ramen Chetty of Kurunegala.....Plaintiffs.

Nos. 1,224 and 871. Vs.

Muna Sammugawel Thever of Yaggepitiya and others.....Defendants.

NOTICE is hereby given that on Saturday, October 31, 1896, commencing at 8 o'clock in the morning, will be sold by public auction at the premises the following property, viz. :—

1. The lands Kohombagahamulawatta, Bomigahamulawatta, Kolongahamulawatta, and Kolongahamulawatta, now forming one block of land called Hitinawatta, with the buildings and plantations standing thereon, situate at Yaggepitiya and Denagomawa.

2. The field Bakmigahakumbura of three pelas of paddy sowing extent, the field Amunekumbura of three pelas of paddy sowing extent, and the Pillewa land of one seer kurakkan sowing extent, forming one property, situate at Yaggepitiya.

3. The field Bulugahakumbura of one amunam of paddy sowing extent, situate at Yaggepitiya.

4. The field Kuppayakumbura of two amunams of paddy sowing extent situate at Yaggepitiya.

5. The eastern portion of 1½ seer kurakkan sowing extent of the garden Hitinawatta (exclusive of the house and maduwa towards the north, with the ground on which they stand, and five coconut trees), situated at Alakoladeniya, all in Mahagalboda Megoda korale of the Hiriyaal hatpattu; mortgaged by bonds Nos. 2,939 and 3,127, dated August 21, 1885, and December 15, 1888, respectively, and declared bound and executable for the decrees entered in the above cases.

Amount to be levied Rs. 5,254·63 and interest.

Fiscal's Office,  
Kurunegala, October 7, 1896.

N. S. CASSIM,  
for Fiscal.

In the District Court of Kurunegala.

Kuna Mana Periya Karupen Chetty and others .....Plaintiffs.

No. 1,380. Vs.

Athapattu Mudiyansele Kiribanda, doctor, of Uhumia.....Defendant.

NOTICE is hereby given that on Saturday, October 31, 1896, at 3 o'clock in the afternoon, will be sold by public auction at the premises the following property, viz. :—

1. The land called Agrakumburapillewa of the extent of 6 acres 1 rood and 4 perches, with the plantations standing thereon, situate at Kohanewatte in Rekopattu korale.

2. The land called Hitinawatta of one timba of kurakkan sowing extent, with the plantations and the tiled house and other buildings standing thereon, situate at Uhumia in Rekopattu korale.

The above lands are hypothecated by the said defendant to the plaintiff in this case, and are liable to be sold in satisfaction of this decree.

Amount to be levied, Rs. 1,008·50 and poundage.

Fiscal's Office,  
Kurunegala, October 5, 1896.

N. S. CASSIM,  
for Fiscal.

In the District Court of Chilaw.

Sawanna Thana Chena Vana Siwaram Chetty, of Negombo ..... Plaintiff.

No. 1,295. Vs.

Warnakulasuriya Ichchanpulige Juwan Fernando, of Nainamadama ..... Defendant.

NOTICE is hereby given that on Monday, November 9, 1896, at 1 o'clock in the afternoon, will be sold by public auction at the premises the right, title, and interest of the said defendant in the following property, viz. :—

1. One-fourth of one-fifth share from the northern side of the garden called Timbirigahawatta, situated at Nainamadama in Kammal pattu, Pitigal korale south, Chilaw District; bounded on the north by the garden of Kaiththan Fernando Annawirala and others, on the east by a water-course, on the south by the land of Francis Perera Muppurala, and on the west by the land of Francis Fernando.

2. One-fourth share from Ihawalawatta, situated at Nainamadama aforesaid; bounded on the north by the garden of Juan Fernando and others, on the east by the garden formerly of Francisco Fernando and now of Bernadu Fernando, on the south by the garden of the heirs of Isabela Fernando, and on the west by the high road leading to Chilaw; containing in extent 3 acres more or less.

3. The garden called Madangahawatta, situated at Nainamadama aforesaid; bounded on the north by the fence of the garden formerly of Siman Fernando, Muppurala, and now of Istegu Fernando, Police Headman, on the east by the fence of the garden of Anthoni Fernando, on the south by the fence of the garden formerly of Francisco Fernando and now of Charles Fernando, Police Headman, and on the west by the garden formerly of Kergel Sinno and now of the defendant; containing in extent 1 acre more or less.

4. Half of one-fourth share from Aluttotawatta, situated at Kandaladi in Kammal pattu aforesaid; bounded on the north by the garden of Martin Fernando and others, on the east by Gin-oya, on the south and west by the water-course called weliole; containing in extent 14 acres more or less.

5. An undivided half share from Kahatagahawatta, situated at Nainamadama aforesaid; bounded on the north by the land of Siman Fernando Muppurala, on the east by the land of the defendant, on the south by the land formerly of the defendant and now of Marselis Fernando, Police Headman, and on the west by the land of the heirs of Siman Fernando Arachchirala; containing in extent 1 acre more or less.

Amount recoverable Rs. 1,525·77, with interest on Rs. 544·99 at 30 per cent. per annum, and on Rs. 826·66 at 24 per cent. per annum from September 20, 1895, and poundage.

Deputy Fiscal's Office,  
Chilaw, September 12, 1896.

B. CONSTANTINE,  
Deputy Fiscal.