COOKE *et al v.* FREEMAN, Assistant Government Agent.

[The Addipola *Sannas* Case.]

D. C., Chilaw, 2,954.

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Reference under Waste Lands Ordinance, 1897—Effect of Government Agent's opinion as to nature of land—Meaning of "chena"—Effect of registration of sannas*—Deed thirty years old—Refusal of Court to presume its genuineness—Burden of proof—*Sannas *with words, &c., of a period later than the date of the grant, and in characters in vogue at a period other than that of the grant—Prescriptive possession of subject of grant—Duty of Judge with reference to administration of law.*

Quœre, whether in the case of a reference under the Waste Lands Ordinance, No. 1 of 1897, the mere fact that the land which is the subject of the reference has appeared to the Government Agent to be forest, chena, waste, or unoccupied land and that he has given the notice required by the Ordinance in respect thereof is not of itself sufficient ground of presumption that the land is such as falls within the scope of the Ordinance.

The word "chena" in section 1, sub-section 1, of the Ordinance stands unqualified by any other words, and means lands which is commonly known as "chena land" in this country: that is to say, land subjected to the process of what is known as "chena cultivation" or left uncultivated and allowed to lapse into jungle with the object of being subjected to such process. So, when it is shown that land which is the subject of a reference under the Ordinance answers to this description, it is to be deemed to be land within the scope of the Ordinance. It is not necessary that it should be shown that the land is such as can be cultivated only after intervals of years.

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The registration of a *sannas* under Ordinance No. 6 of 1866, is not tantamount to an admission by Government of its genuineness. By registration the initial objection to the reception of a *sannas* in evidence is removed, but its validity or effect or claim of any party to have it received in evidence may be questioned on any ground other than lack of registration.

When a Court refuses to presume, under section 90 of the Evidence Ordinance, that a *sannas* thirty years old is genuine, the party relying upon it is bound to prove it. In the absence of such proof it is not necessary that the opposite party should lead evidence to show it is a forgery.

Where a *sannas* purporting to have been granted in the Saka year 1247 (corresponding to 1325 A.D.) by King Bhuwanaka Bahu of Kotte, was contested on the ground, *inter alia*, that the Sinhalese city of Jayewardenapura, now known as Kotte, was not in existence then, *held* that historical research disclosed facts adverse to that contention, but the fact that the *sannas* contained certain Sinhalese words, expressions, and names of more recent origin, and that the characters did not appear to be those in vogue at the period of the alleged grant, sufficiently indicated that the document was not genuine.

The fact that a certain number of families composed of an indefinite number of persons claiming to be the descendants of the grantee on an alleged *sannas* have lived in the land which is the subject of the alleged grant for many years, and that individual members of these families have for upwards of thirty years cultivated such portions of the land as they chose and at such times and intervals as were found to be convenient, is insufficient to give rise to prescriptive rights in the absence of evidence of any individual members of these families and their predecessors in title having been in possession of any particular allotment of land actually or constructively during the prescriptive period.

It is the duty of a Judge to administer the law as he finds it, and protestation by a Judge against the supposed injustice or severity of a law on each occasion he is required to administer it is unavailing and calculated under certain conditions to produce mischievous results.

THE facts are sufficiently set out in the judgment.

The Hon. A. G. Lascelles, K.C., A.-G., and *Fernando, C.C.*, for the defendant.

Dornhorst, K.C. (with him *E. W. Perera*), for the plaintiffs.

Cur. adv. vult.

8th September, 1905. PEREIRA, J.—

This is a case under the Waste Lands Ordinance, No. 1 of 1897, as amended by Ordinances No. 1 of 1899 and No. 5 of 1900. On a reference made under the Ordinance to the District Judge he has made order under section 16. He has held that eighteen of the allotments of land described in the statement of reference belong to the Crown, and he has dismissed the reference as regards the other lots specified therein. With reference to three of the lots (P 1,176, Q 1,176, and 1,106) adjudged to belong to the Crown there was practically no contest. Each party appeals from that part of

the judgment as regards the rest of the lots that is adverse to his claim. The claimants, who under the Ordinance are to be regarded as the plaintiffs in this proceeding, questioned the right of the Government Agent to take steps under the Ordinance in respect of the allotments of land specified in the reference on the ground that they were not such lands as were contemplated by section 1, sub-section 1, of the Ordinance, and accordingly the following issue seems to have been framed by the District Judge: "Are the lands under reference in this case forest, chena, waste, or unoccupied lands within the meaning of Ordinance No. 1 of 1897 ?" This is admittedly the principal issue in the case.

As regards thirty of the allotments the District Judge has decided this issue in the negative, and the question that should be considered first is whether these allotments answer to the description of land mentioned in section 1, sub-section 1, of the Ordinance. The contention for the Crown, in the main, is that with the exception of some three or four of the allotments, which are covered with water and which may therefore be treated as waste land, the lands are chena lands. In considering this question it is important to note, in the first place, the words used in section 1, sub-section 1, of the Ordinance. The sub-section runs thus: "Whenever it shall appear to the Government Agent ..... that any land or lands ..... is or are forest, chena, waste, or unoccupied, it shall be lawful for such Government Agent to declare by notice that such land or lands or any of such lands in respect of which no claim is made to him within the period of three months from the date specified in such notice shall be deemed the property of the Crown." A preliminary question arises whether the fact that certain land has appeared to the Government Agent to be forest, chena, waste, or unoccupied, and that he has given the required notice in respect thereof, is not of itself sufficient proof that the land is such as falls within the scope of the Ordinance. An authority that would appear to be applicable to the question is a decision under the Land Acquisition Ordinance. It is the decision in the case of *Government Agent v. Perera* (*7 N. L. R. 313*). It was there held that the decision of the Governor on the question whether a land was needed or not for a public purpose was final, and the District Court had no power to entertain objections to the Governor's decision. The words of the Ordinance are very much the same as the words of the sub-section referred to above of the Waste Lands Ordinance. The words are: "Whenever it shall appear to the Governor that land in any locality is likely to be needed for any public purpose, it shall be lawful for the Governor to direct," &c. I shall not, however, decide the question as to

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whether the Government Agent's decision as to the nature of the land is binding on all parties to the extent of precluding them from questioning the Government Agent's right merely to initiate proceedings under the Ordinance. I shall rather address myself to a consideration of the ground on which the District Judge has held that the thirty allotments of land referred to above did not fall within the scope of the Ordinance. That ground is that the defendant has not proved that the lands are such as can be cultivated only after intervals of several years. The judgments he has relied upon and many that have been cited in the course of the argument in appeal have, in my opinion, no application whatever to the question as to the meaning to be given to the words used in section 1, sub-section 1, of Ordinance No. 1 of 1897. Those are decisions under section 6 of Ordinance No. 12 of 1840. True, the words of that section are very much the same as those of section 24 of the Waste Lands Ordinance, but section 24 comes into play after the proceedings are once floated—after the machinery of the Ordinance is once started, that is to say, when the serious question of actual ownership has to be decided by the Court, the parties being brought to close quarters. All the requirements necessary to commence proceedings—to start the machinery—are to be looked for within the four corners of section 1, sub-section 1, of the Ordinance. There the word "chena" stands unaccompanied, unqualified, by any other words, and the simple question is whether the land is such as would ordinarily in this country be called chena land. "Chena land" in this country is understood to mean jungle land burnt and cleared at intervals of years and sown with fine grain and vegetables. The meaning here given has reference to certain methods of cultivation adopted by the Sinhalese villager. Land that is now subjected to chena cultivation may, under certain conditions, be capable of perennial cultivation every year, but from poverty or indolence the Sinhalese villager is not in the habit of making an effort to induce thoses conditions, especially in the direction of irrigating the land and feeding the soil with suitable manure. He would rather allow Nature to do that, and stand by with folded arms until she has done it; in other words, he would allow the land to lie fallow, let jungle grow on it, wait until the land receives such nutrition as it may from rain and other natural sources, and ulitimately cut the jungle down, burn it, and let the ash mingle with the soil so as to form a rich superstratum for his next crop of fine grain. Fine grain and vegetables that are grown on chena land having a tendency to exhaust the soil, no further crop can be raised until after another interval of years. "Chena land," as

understood in this country, is land subjected to this process. It may be capable of being subjected to any other process of cultivation, but that does not make it any the less chena land. If it is land which in fact is subjected to this process or left uncultivated and allowed to lapse into jungle with the object of being subjected to it, it is chena land. Now, what is the evidence in the case? The plaintiffs have supplied all the material necessary. Their witness, Mr. Ferdinands, the surveyor, has described all the thirty allotments with the exception of three or four which are under water as chena land. He has said so in plain terms. It is not quite clear that he has allowed the "general instructions" that he has referred to in his re-examination to influence his opinion as to the nature of the land; but, assuming he has, I have no fault to find with those instructions. The lands that the instructions require should be regarded as chena land may well be so regarded. The evidence of the witness Andiralla Appuhamy also shows that the lands were chena lands. Whether they were cultivated as private lands or Government lands, the description "chena" applied to them. I have no hesitation in holding that the thirty allotments of land in question were chena lands and fell within the scope of Ordinance No. 1 of 1897.

I shall, however, proceed to examine one or two of the authorities cited. The District Judge relies mainly on the judgment in the case of *Queen's Advocate v. Appuhamy* (*1 S. C. C. 26*). That was a decision as to the construction to be placed on certain words in section 6 of Ordinance No. 12 of 1840. The question in the case was whether certain *owita* land was the property of the Crown; and Phear, C.J., held that in order to claim the benefit of the presumption created by section 6 of the Ordinance the Crown should prove that the land in question was either chena or land which is, in the same sense as chena is, incapable of being cultivated otherwise than after intervals of several years. The District Judge thinks that the decision is applicable to the present case, because section 24 of the Waste Lands Ordinance is very much the same as section 6 of Ordinance No. 12 of 1840, but, as I have shown already, section 24 of the Waste Lands Ordinance does not contain any definition of "chena land," and it has nothing to do with section 1, sub-section 1, of that Ordinance. It comes into play after the aid of the Ordinance has already been invoked, and when the final determination of the question as to title is being discussed. But assuming that the authority cited is applicable, all that it decides is that in the case of land other than chena it has to be shown that in the same sense as chena (that is, the sense I have referred to already) it is incapable of being

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cultivated otherwise than after intervals of several years. Chena land is land which in fact is so cultivated and reserved as explained above to be so cultivated. To expect proof that any land can be cultivated only after intervals of several years in order to show that it is chena land would be to nullify the effect of the Ordinance, because, as I have observed above, chena land under certain conditions may be capable of cultivation every year. The cultivation referred to in the Ordinance is such cultivation as I have explained above. Mr. Justice Lawrie puts the matter clearly in the case of *Corea Mudaliyar v. Punchirale* (*4 N. L. R. 135*). These are his words: "It was argued that this was not, properly speaking, a chena, because chenas are defined in the Ordinance No. 12 of 1840 to be land which can be only cultivated after intervals of several years, and that there was evidence here that in Millegahahena the soil is fertile, and that cocoanuts and other permanent food-producing trees might be planted. The words 'can be only cultivated after intervals of years' mean, I think, have *hitherto* been so cultivated. Science and experience discover permanent plants suited to chena land, notably tea, which has been planted and flourishes on hundreds of acres which were formerly chena. I cannot but hold that this half acre, and, indeed, the whole of the land spoken to by the witnesses is chena land within the meaning of the Ordinance No. 12 of 1840." It is indeed not necessary to discuss the other authorities cited on this point. Most of them have no bearing on the question, and those that are applicable support the view I have expressed above. For the reasons I have given I think the District Judge is wrong in holding that the thirty allotments of land mentioned above do not fall within the scope of the Ordinance. When proceedings have once commenced under the Ordinance, the claimants are, by the Ordinance, placed in the position of plaintiffs, and the Government Agent in the position of defendant, and the burden to prove title is thereafter on the plaintiffs as in an ordinary action in respect of land.

The question then to be considered is whether the plaintiffs have proved title to the lots mentioned in the reference other than the eighteen lots specified in the decree, or whether they have proved such possession of these lots as is defined in section 3 of Ordinance No. 22 of 1871. The plaintiffs have produced a *sannas* which contains a grant, as I understand, of the whole of what is known as the Addipola village, with the exception of the three lots P 1,176, Q 1,176, and 1,106. With regard to this *sannas*, two questions appear to have been raised, namely—(1) whether it is a genuine document, or a forgery; and (2) whether it is competent

to the defendant to question its genuineness. As regards the latter, it was pointed out that the *sannas* had been registered under Ordinance No. 6 of 1866, and it was argued that the registration of a *sannas* under this Ordinance was an admission by Government of its genuineness, and the Government was thereafter estopped from impeaching it as a forgery. Reference was made to the preamble of the Ordinance to show that the object of the Ordinance was to prevent false deeds, olas, and *sannases* purporting to bear old dates being produced in evidence in Courts of Justice; and the contention was based thereupon that the registration was a guarantee that the registered deed was genuine, and it was thereafter to be deemed as such at least as against the Crown. I confess I have not been able to see the force of this argument. My reading of section 7 of the Ordinance is that an unregistered *sannas*, whether genuine or not, cannot be received in evidence in any civil proceedings in any Court of Justice for the purposes mentioned in that section; but if it is registered, while the bar *in limine* created by the Ordinance to its reception in evidence is removed, its validity or effect or claim of any party to have it received in evidence may be questioned on any ground other than that of lack of registration. The second proviso to this section is not very happily expressed, but the above I take to be its meaning; and it was competent to the Government Agent to object to the reception of the *sannas* produced on the ground that it was not genuine. It was further contended that as the *sannas* purported, on the face of it, to be more than thirty years old, its genuineness should have been presumed. The District Judge seems to have been asked to do so under the provisions of section 90 of the Evidence Ordinance, but in the exercise, as he says, "of the discretion vested in him by law, and remembering the false *sannases* often produced in Courts," he was not prepared to presume that this *sannas* had been duly executed, and he called for proof of it. No proof whatever of the *sannas* was adduced. The only expert witness called by the plaintiffs, namely, High Priest Dharmarama, did not venture to say that in his opinion the *sannas* was genuine. Of course, in a case like this, direct proof of execution cannot be expected. The document could only have been proved by the opinion-evidence of expert witnesses, however unsatisfactory such evidence may be; but no such evidence was adduced by the plaintiffs, and on the District Judge's ruling as to the presumption provided for by section 90 of the Evidence Ordinance the defendant was entitled to judgment on the question as to the genuineness of the *sannas;* and it was

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somewhat inconsistent of the District Judge to have required or allowed any rebutting evidence to be led when there was in point of fact nothing to be rebutted. The argument in appeal had, however, proceeded on the weight and value and effect of this evidence to such an extent that I presume that a decision thereon is desired by both parties, and I shall proceed to examine this evidence. The grounds on which the opinions of the expert witnesses against the genuineness of the *sannas* are based have been summarized and arranged by the District Judge in six groups. I shall first deal with the sixth, namely, certain anachronisms which are supposed to support their views. The *sannas* purports to have been granted by King Bhuwanaka Bahu of Kotte in the Saka year 1247, equal to 1325 A.D. The grantee is one Suriyahetti Mudiyanse who is said to have come from the Telugu country. In the course of his argument in appeal it was stated by Mr. Crown Counsel Fernando, who addressed us on some parts of the case for the defendant, that the attitude assumed by the plaintiffs in the Court below was that Alakeswara, a prominent figure in Sinhalese history, who was himself a native of South India (Chola country), had established himself at Kotte, or Jayawardenapura, as Bhuwanaka Bahu V., and that it was he who, moved by the fact of Suriyahetti Mudiyanse also having come from South India, invited him to his presence and made him a grant of land. This is borne out by what the District Judge says in his judgment. He points out a mistranslation in what is known as the authorized translation of the Mahawansa, and says:—"Though the Crown now admits the mistranslation in verse 9, and that Alagakonara was not Bhuwanaka Bahu V., the other side does not. Their witness Sri Dharmarama insists that '*so*' in Pali has not the meaning now given to it." So that, according to the contention in the Court below, the questions to be decided were—(1) was Alakeswara the same person as Bhuwanaka Bahu V.? and (2) did Bhuwanaka Bahu V. reign at Kotte or Jayawardenapura in 1325 A.D.? The District Judge, in view of the contention in the Court below, has been at great pains to go into the maze of Sinhalese history to show that Alakeswara was not identical with Bhuwanaka Bahu V.; but I might at once say that it was not seriously contended in appeal that he was. The facts and figures cited by the District Judge are sufficiently convincing, but I might add that I have looked into the compilation of Sinhalese history known as the *Helle-diu-Rajaneya*, the first work of its kind I believe, which seems to have been first published in 1853, and re-edited at the instance of Government under the direction of the Central School Commission in the year 1868; and

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I have found that it bears strong testimony in favour of the decision arrived at by the District Judge. It cannot, of course, be cited as a work of authority, but it may be assumed to be the result of careful research into all the reliable material available at the time. A learned paper contributed by Mr. E. W. Perera, Advocate, to the literature of the Royal Asiatic Society, in September, 1904, also, I see, supports the District Judge's decision. Alakeswara was *Praburaja* or sub-king under Wikrama Bahu III., and it is said that Bhuwanaka Bahu V., who succeeded the latter, reigned at Kotte under the ægis of his great minister Alakeswara. That was about the year 1391. So that the contention that Alakeswara, in the character of Bhuwanaka Bahu V., was the grantor of this *sannas* may be dismissed from consideration altogether. There is an incident in Sinhalese history relating to the capture and removal of a king of Ceylon by the Chinese. The *Rajavaliya* refers to this event, and gives Wijaya Bahu as the name of the King, and says: " After this there was no king in Lanka, but the minister Alakeswara lived in the country of Raygama." The question has been much discussed as to which Wijaya Bahu is referred to here, still in the hope on the part of the plaintiffs, I take it, of identifying Alakeswara with some one or other of the Bhuwanaka Bahus in the long line of kings of that name. On the one side it has been said that the king referred to is Wira Bahu II. (No. 155 in the *Mahawansa* list), and on the other that it is possibly Wijaya Bahu IV. (No. 144 of the *Mahawansa* list) that is referred to. In answer to the latter the defendant's counsel points out that it is authentic history that Wijaya Bahu IV. was assassinated by his minister Miththasena, and the plaintiff's counsel replies that possibly the king had returned to Ceylon from his enforced excursion to China. It is difficult to unravel, as the District Judge says, the tangled web of the history of this period. It is said that an attempt has been made by some of the writers to mystify and conceal matters, so as to withhold from the public gaze the humiliating circumstance of the capture of a king of Ceylon by the Chinese and the participation of an illustrious high priest in the assassination of a king. It cannot, however, be gainsaid that between 1319 and 1361 there were two kings of Ceylon who bore the name Bhuwanaka Bahu, and the question remains whether it was possible that either of these was at Kotte so as to be the author of the *sannas* pleaded in this case. This brings me to the question whether Jayawardenapura was founded by Alakeswara or whether it was in existence before his time. It is said that he was not the first builder of the city, but that he fortified the old town and called it " New Jayawardenapura," and reference has been made to

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the passage, "*Abhinava Jayawardena namin prasidha Kottayak lava*" in the *Nikaya Sangrahaya*, meaning "caused to be made a splendid fort under the name New Jayawardena." I cannot help observing that Mr. Crown Counsel Fernando's reply to this is forcible. He points to the *Mahawansa*, which speaks (see page 320 of Mudaliyar Wijesinghe's translation) of Alakeswara having "built the famous city of Jayawardene Kotte, and adorned it with rows of great ramparts and towers," not where a city of that name already stood, but "on the southern side of Kelaniya and nigh unto the village Darurugama"; and as regards the name "New Jayawardenapura," he argues that it does not necessarily mean that an old Jayawardenapura was already there, but that a Jayawardenapura may have been elsewhere, just in the same way as the name "New York" does not necessarily imply that when the city was founded or named there was already a city of the name of "York" there. On the other hand, there is the strong testimony cited by the District Judge—Colonel Yule's "Cathay," in which it is stated that "Kotte Jayawardenapura near Colombo is first mentioned as a royal residence about 1314," and De Marignoli's reference to Kotte in Ceylon as a place where he had been in 1339. These and other and stronger authorities cited by the District Judge afford strong proof of the existence of Jayawardenapura long anterior to the reputed building of it by Alakeswara. If then Jayawardenapura was in existence in 1325, and if, as Colonel Yule says, it was a royal residence about 1314, what more likely than that either of the two Bhuwanaka Bahus who, as stated above, was possibly the Sinhalese King in 1325, was temporarily or otherwise resident there, although his chief seat of government was elsewhere. Then, there is the Ambulugala *sannas* granted by King Bhuwanaka Bahu at Jayawardenapura in Saka 1254, equivalent to 1332 A.D. On the whole, I am not disposed to attach much importance to the contention that Kotte was not in existence in 1325 or that there was no king by the name Bhuwanaka Bahu at that time to issue a *sannas* from Kotte. I think that some of the other grounds urged tell with greater effect against the genuineness of the *sannas*, and I shall now proceed to deal with them. The *sannas* recites (to put it shortly) that King Bhuwanaka Bahu of Kotte, having heard that Suriyahetti Mudiyanse of the Telegu country had landed at Ponparippuwa, sent Suriyahetti Mudiyanse a message, and the Mudiyanse thereupon, thinking it right that he should "show himself to and bow down before the king after offering presents," presented to the king sixty *Viliya* (more probably *Vilisa*) *kurun*, and one hundred and twenty pure silver

kurun and a white milch cow with calf, and the king thereupon bestowed on him the title *Telangapatha Suriyahetti Adicari Mudiyanse*, and granted for his "belly-increase" the tank called Addipola. We have absolutely no facts regarding the position and rank of the grantee in his own country. If the opinion of High Priest Dharmarama—a witness called by the plaintiffs—is to be relied on, the thinness of the copper-plate on which the *sannas* is written is evidence that the recipient of the royal bounty was not a person of very high rank; and yet his very arrival at Ponparippuwa is said to have concerned the king so much as to induce him to send him a message. If the visitor was of such importance as to merit royal recognition in that way, the thinness of the copper-plate on which the *sannas* is written is altogether unexplained. The District Judge seems to think that the grantee was "an adventurer from India." However that may be, if the story is true, he was certainly wise in his generation to part with his *kurun* and white cow, for thereby he secured for himself "belly-increase" for æons upon æons during which (to use the descriptive words of the *sannas*) the sun, moon, earth, and sky should exist; but there appears to be too much "give and take" in this transaction to sustain confidence in the truth of the story, and it is not very clear that gold and silver *kurun* were presents befitting the dignity of royalty in those times. "*Sannases*," as stated by Mr. Bell (see page 91 of his Archæological Report), "were issued by Sinhalese kings either to religious bodies or individual priests or laymen usually to obtain merit in accordance with Buddhistic dogma or in acknowledgment of particular services to the State." There are a few instances of grants made to artizans in recognition of their skill, some of whom have on such occasions presented specimens of their workmanship to the king. Among the presents mentioned in the *sannas* in question are a certain number of *Viliya* or *Vilisa kurun*. These words afford some help in the solution of the question before us. Mr. Bell seems to think that *Viliya* means King William IV. He does not appear to say so with much confidence. He merely says "*Viliya kurun* I take to be the crown piece of William IV." I am inclined to think that this derivation is too far-fetched. No British sovereign is referred to by the Sinhalese by the mere contraction of the name in that way. Mr. Bell himself has not heard of crown-pieces of the reign of Queen Victoria or any of the earlier sovereigns being referred to by any contraction of the name of the sovereigns being coupled with the word *kurun*. There is little doubt that the word *Viliya*, or more probably

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Vilisa—(it is difficult to say which it is in the *sannas*, there being much similarity between the terminal Sinhalese letters *yayanu* and *sayanu* of these words)—is a mere contraction of the word *Vilisianu*. That is the evidence of the plaintiffs' witness, High Priest Dharmarama, and Mr. Crown Counsel Fernando did not hesitate to accept the correctness of that derivation. Now, *Vilisianu* is not a Sinhalese word—at any rate not a word that has come down to us from ancient times. High Priest Dharmarama has not found it in any book. It is a word of very recent origin, and may, as Mr. Crown Counsel Fernando suggests, be a mere corruption of the Italian word *Veneziano*, which I understand is the name of an Italian gold coin. However that may be, the word, as observed already, is of recent origin. It is common in colloquial Sinhalese, and is presumably a corruption of some foreign word. Then, as to the word *kurun* —that too is not a Sinhalese word of any antiquity. There is no pretence that it is Tamil or Telegu. Any way, the learned District Judge who, I have no doubt, knows whether that is so, has given us no information on the subject. The derivation attempted by High Priest Dharmarama is fanciful. He attempts to derive it from the Sanskrit *Karshapana*, but he admits that the Sinhalese word actually derived from it is *Kahavanu*. Where then is the room to wedge *kurun* in? It is a word of very recent origin. If it was a word in use in the time of the Kotte kings, such an able scholar as Mudaliyar Simon de Silva must know it. The Sinhalese language has been handed down to us with a completeness that is astonishing. From about the time of Pandita Prakrama Bahu III, scholars and poets (among them certain Kings, Queens, and Ministers of State) have shown restless activity in vying with one another to reach high excellence in literary effort, and the literature that has come down to us compares favourably with that of any other country in the civilised world. If the two words under consideration were words in use when Jayawardenapura was the seat of government, they must be found in the writings of that period or of later times. Their absence in those writings shows that there were no such words then in use. *Kurun* is no doubt a corruption of the English word "crown." The English crown-piece was a somewhat rare coin in Ceylon even before the introduction of the coins that are now current in the Island. The word "crown" was twisted by the Sinhalese into *kurun* or *kuruma* to signify it. The word having been originally applied to the crown-piece, which, as I have observed, was rare, its application gradually extended to other rare coins and foreign coins, and hence those

who were responsible for this *sannas* would appear to have used it to mean coins which they imagined were brought over by Suriyahetti Mudiyanse from the Telegu country, forgetful or ignorant of the fact that the word was of recent origin, and its use would lead to the detection of the forgery. There is one other word which satisfies me that the *sannas* is not genuine, and that is *Kotte* after the King's name. The King is referred to as "Bhuwanaka Bahu of Kotte." In the first place it is clear that, if he was one of the Bhuwanaka Bahus anterior to Bhuwanaka Bahu V., his permanent seat of Government was not Kotte. The *sannas* does not purport to have been granted *at Kotte*, but by King Bhuwanaka Bahu *of Kotte*. That is a very unlikely description of the king. In the next place the word *Kotte* would not have been used. It is merely a word meaning "fort." The city had its distinctive name Jayawardenapura. It must have been commonly spoken of as the *Kotte*, as perhaps the principal fortress of the Island was there. It must have been thus referred to by foreigners, and indeed the word has now passed into a name, and ancient Jayawardenapura is now called Kotte in the same way as Kandy, the Siriwardenapura of the Sinhalese kings, is at the present day called by the Sinhalese *Nuwara* (city) or *Maha Nuwara*. In the Ganegoda *sannas* by Bhuwanaka Bahu V., in the Beligala *sannas* by Sri Prakrama Bahu VI., and in the Devundera Dewala *sannas* by Wijaya Bahu VII. the city is referred to as Jayawardenapura or Jayawardena Kotte. The reference in the *sannas* in question to the city by the word *Kotte* shows that the *sannas* is a manufacture of modern times after that word had actually lapsed into a name for Jayawardenapura of ancient times. I do not attach much importance to the absence of the initial "*Sri*" in the *sannas* at its commencement. It is possible that like many other letters it has disappeared from the *sannas*. Besides, it is mentioned twice in the body of the *sannas* immediately before the word "*sannas*." But the fact that the writing is modern instead of being the character in vogue at the period is a more serious objection. Anybody examining the *sannas* cannot fail to see that such letters as can be deciphered are quite modern in form and style. I think complete reliance may be placed on Mr. Bell's opinion on this point. On the whole I think there is abundant reason for considering that the *sannas* is not genuine, and I hold with the District Judge, though for reasons different in some respects from his, that it is a forgery. Before quitting this part of the case I must express my indebtedness to the learned District Judge for the help I have derived from the vast amount of historical lore that he has exhumed and set forth in his judgment.

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The only question that remains is whether the plaintiffs have had prescriptive possession of the lots specified above. Certain documents have been produced by the Crown with the object apparently of showing that certain parcels within the disputed area were regarded by two at least of the claimants as belonging to the Crown, namely, two petitions by two of the claimants whereby they apply to be allowed to purchase certain parcels of land near or in Addipola. In my opinion it has not been satisfactorily shown that these claimants intended by these petitions to refer to any part or portion of the lands now in claim. No doubt, plans have been produced to locate the parcels applied for, but in strict law this location has not been brought home to the knowledge of either of the claimants concerned. On the contrary, one of them says that the land he applied for was land outside Addipola, and when the surveyor came, purporting to act in pursuance of his petition, to survey the land applied for and actually surveyed land within the claim, he informed the Arachchi that he did not want the land. In my opinion it has not been shown that either these documents or the register of permits issued for the cultivation of Government chenas, produced by the defendant, in any way bind the plaintiffs or conclude them in respect of any rights that had to be adjudicated upon in this proceeding. In approaching the question of prescriptive possession the District Judge deplores the supposed unfavourable position into which the claimants are thrown by the Waste Lands Ordinance. That is an attitude that, in my opinion, is not to be approved. Questions as to the expediency or inexpediency, the justice or injustice, of this legislation had, I suppose, to be canvassed at a different time on a different arena. We have to administer the law as we find it. As stated by Jessel, M.R., in *Bunting v. Sargent* (*13 C. D. 335*), "a Judge has nothing to do but to administer the law as he finds it," and protestations by a Judge against the supposed injustice or severity of a law, on each occasion he is called upon to administer it, are not only unavailing but calculated under certain conditions to produce mischievous results. Rightly or wrongly, the Legislature has placed claimants under the Waste Lands Ordinance in the position of plaintiffs, however favourable or unfavourable that position may be, and if they base their claims on prescriptive possession the burden of proving such possession rests on them as plaintiffs. In the present case the only evidence of prescriptive possession is practically that of the witness Punchirala. If a statement by the plaintiffs' witness Andiralla Appuhami is to be accepted as evidence, the plaintiffs' claim to prescriptive rights must be

deemed to have wholly failed. The statement I refer to is that at the end of his cross-examination: "I only remember that the chenas of Addipola were cultivated at Crown rates, not private rates." I shall, however, not attach much importance to this statement, but proceed to examine the other evidence. That evidence amounts to no more than this—that some twenty families composed of an indefinite number of persons claiming to be the descendants of Suriyahetti Mudiyanse have lived in the village Addipola for very many years, and that individual members of these families have for upwards of thirty years cultivated such portions of land in the village as they chose and at such times and intervals as were found to be convenient. There is no evidence of the possession of these lands by Suriyahetti Mudiyanse himself. Of course such evidence could not be available. The descent of any of the claimants from him has not been traced. The exact relationship of the claimants among themselves has not been established, nor have they shown their relationship to any of their alleged predecessors in possession of these lands. The families, I take it, are composed of men, women, and children, a large number of whom, I presume, are related to or connected with those who claim to be the lineal descendants of Suriyathetti Mudiyanse by marriage. No individual members of these families have been shown to have had possession of any particular allotment of land now in question, either actually or constructively, during the prescriptive period, and I fail to see how any one or other of the claimants can be said to have acquired prescriptive rights in respect of these allotments. The case at page 83 of Vanderstraaten's reports has been cited to us. There, there seems to have been very clear and precise evidence of possession for thirty years, and (proof of possession for a third of a century being then necessary under the Roman-Dutch Law) the Court held that, in the circumstances, possession for the short additional period necessary to make up the third of a century might fairly be presumed. In the present case there is no clear and precise evidence of possession at all. The individual possessors and the portions of land possessed can only be evolved by an effort of the imagination of which, I confess, I am not capable. The brute facts sworn to by the witnesses do not help me to decide in favour of the plaintiffs. I confess I cannot see in the village population of Addipola that reflex of the "Teutonic Township" or of an "organized, autonomous, self-acting group of families" that the District Judge has seen, nor do I hear that "echo from far-off times" that he has heard. I am left with a few dry facts to arrive at a decision, and I can only say that they do not permit me to

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hold that the plaintiffs have had such possession or enjoyment as is necessary to give any prescriptive rights in respect of the lands in claim.

On the minor issues in the case I agree with the District Judge.

I would set aside so much of the judgment as dismisses the reference as regards lots other than those specified in the decree, and declare that the Crown is entitled to the forty-eight lots specified in the reference, and give the defendant cost in both Courts.

WENDT J.—I agree.