Present: Lascelles C.J. and Wood Renton J. 1913.

KIRIMENIKA *v.* DURAYA *et al.*

63—D. C. Kegalla, 3,210.

Deed thirty years old—Duplicate produced from the Registrar-General's Office—Admissible in evidence without further proof.

A duplicate of a deed over thirty years old produced from the office of the Registrar-General is admissible in evidence without further proof ; it must be held to have been produced from proper custody within the meaning of section 90 of the Evidence Ordinance.

A duplicate cannot be treated as a copy of the original deed ; it is in all respects an original deed.

THE facts appear from the judgment.

De Sampayo, K.C., for the appellant.

A. St. V. Jayewardene (with him *De Soysa*), for the respondents.

1913.

Kirimenika v. Duraya

April 23, 1913. LASCELLES C.J.—

This appeal relates to the title of a small parcel of land known as Pitawelakumbura, which is a portion of a panguwa containing four other lands. The lands in dispute, together with the other lands included in the panguwa, belonged to one Kira, to whom, for distinction, I will refer to as Kira the elder. The title of the plaintiff is based on a conveyance in the year 1845 from Kira the elder to Kira the younger, who is the father of the plaintiff. The plaintiff having acquired in 1910 the shares of his two brothers now claims title to the land in dispute. The defence to the action is two-fold. The defendants state, in the first place, that the deed of 1845 has not been proved; and they contend, in the second place, that, even if this deed has been proved, they have acquired a title by prescription to the land. With regard to the first point, it is true that the document, which was presumably given by Kira the elder to Kira the younger, has not been produced in evidence. The plaintiff relies on the duplicate of the deed which has been produced from the office of the Registrar-General. The deed in question is over thirty years old, and under section 90 of the Evidence Ordinance is admissible without further proof if it has been produced from proper custody. The document in question cannot, in my opinion, be treated as a copy of an original deed. This document, no less than the deed which passed to the grantee, was signed by the parties and attested by the notary. It is in all respects an original deed. The question merely is whether, having been produced from the office of the Registrar-General, it is to be deemed to have come from proper custody. No authority has been cited to us as to the admissibility of a duplicate deed produced under these circumstances. But on principle I am of opinion that such a deed is admissible. The law at that date, as now, required deeds relating to land to be executed in duplicate, and that one of the duplicates should be filed with the Registrar of Lands or the Registrar-General. It is, in my opinion, impossible to say that a deed which has been produced from the custody of a public officer, who by law is required to have charge of such documents, has not been produced from proper custody within the meaning of section 90 of the Evidence Ordinance. I am therefore of opinion that the deed of 1845 has been proved. This being so, the will of Kira the elder, on which the title of the defendants is based, passed no title to the devisee, and the only ground on which the defendants can rely is that of prescription.

[His Lordship then discussed the evidence.]

I would dismiss the appeal with costs.

WOOD RENTON J.—

I entirely agree, and have nothing to add.

Appeal allowed.