Present: Pereira J. 1913.

MENIKA *v.* ADAKAPPA CHETTY.

223—C. R. Badulla, 1,448.

Vendor and purchaser—Action by third party against purchaser—Notice by purchaser to warrant and defend title—Defence abandoned at trial by purchaser as untenable—Duty of purchaser to get himself made added party.

Where a vendor of a parcel of land, who by agreement or otherwise had become liable to warrant and defend his vendee's title, received notice from his vendees of an action against them disputing their title to the land, it was his duty to have himself added as a party to the case, or otherwise to do all he could to defend his vendee's title. After the service of such notice, the fact that the vendees, finding that certain defences were untenable, abandoned those defences would not exonerate the vendor from his liabilities.

THE facts appear sufficiently from the judgment.

Gunaratne, E. T. de Silva, and *E. W. Jayewardene,* for defendant, appellant.

Mendis and *Bartholomeusz,* for plaintiff, respondent.

Cur. adv. vult.

July 16, 1913. PEREIRA J.—

The facts that I find disclosed in the record of this case and of the connected case No. 113 render it unnecessary to consider many of the questions of law raised in the course of the argument in appeal. The notice issued in the old case to the present defendant

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was, I find, quite sufficient to enable the defendant to know that he was required to warrant and defend the title of the defendants in that case. The notice is at page 122 of the record, and it required the present defendant to take notice that an action had been instituted by the plaintiff in that case claiming the land sold to the defendants in that case by the present defendant, and a copy of the plaint was annexed to that notice. On the receipt of that notice it was clearly the duty of the present defendant to apply to the Court to have himself added as a party to the case, or otherwise render to the defendants in that case all the help that it was within his power to render, and defend the title of his vendees against the attack made on it by the plaintiffs. At any rate, the defendant should have watched the progress of the case until its termination, and it was not necessary to serve a fresh notice on him when the case returned from appeal. At the second trial of the old case the defendants in it found it hopeless to contest the title of the plaintiffs, and limited the defence to the claim for compensation for improvements. This was not a compromise as the present defendant tries to make out, but a limitation of the contest to certain points only as the present plaintiffs had found that the rest were untenable. The present defendant was not there, as he should have been, to object to the proceeding, and it is not now in his mouth to say that he was prejudiced. Clearly, the defendants in the old case were not bound to adhere to what they found was an untenable position, when, especially, their vendor was not present to help them in defending the title conveyed by him to them.

I affirm the judgment appealed from with costs.

Appeal dismissed.