

*Present:* Pereira J. and De Sampayo A.J.

1914.

SILVA *v.* KINDERSLEY.

109—D. C. Kurunegala 4,666.

*Document tendered in evidence without objection by other party in civil suit.*

In a civil suit, when a document tendered in evidence by one party is not objected to by the other, the document is to be deemed to constitute legally admissible evidence as against the party who is sought to be affected by it.

**T**HE facts are set out in the judgment.

*Bawa, K.C.* (with him *A. St. V. Jayewardene* and *Dias*), for the third plaintiff, appellant.

*van Langenberg, K.C., S.-G.* (with him *V. M. Fernando*), for the respondent.

*Cur. adv. vult.*

September 9, 1914. PEREIRA J.—

The portions of land now in dispute between the appellant and the respondent are those marked 1, 55, 30, and 34 in preliminary plan No. 556 (D 9), and the question to be answered by the District Court was whether these lots were included within the boundaries given in the Temple Lands Register as the boundaries of the land admitted by the Temple Lands Commissioners to belong to the Dalada Maligawa. The evidence of Mr. Shipton, the Superintendent of Surveys, North-Western Province, places beyond doubt the fact that Aturuwellahenabodahenyaya, which the appellant contends is outside the village Dambadeniya, but which really is a henyaya in Dambadeniya, is identical with lot No. 30, and this henyaya is excluded from the land within the boundaries referred to above in the Temple Lands Register. It has been strongly contended that Mr. Shipton's evidence is of no value, because the plans and surveys he relies on depend largely for their correctness on the field books of Messrs. Gordon and Mackenzie, and that these field books cannot be

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treated as evidence. It is too late to raise this contention now, because these field books were admitted in evidence in the District Court without objection. According to the "explanation" attached to section 154 of the Civil Procedure Code, when a document tendered in evidence is objected to, the question arises whether it constitutes legally admissible evidence as against the party who is sought to be affected by it. The inference is that when the document is not objected to by the party affected, no such question arises. It would be manifestly unfair to a party who tenders a document in evidence if, after he has been lulled into security by lack of objection by his opponent, he is suddenly required to meet for the first time in the Appellate Court objections to the receipt of the document in evidence. If timely objection had been taken, the defendant might possibly have shown that the documents in question in this case were evidence under some such provision of the law as that of section 32 (2) or 35 of the Evidence Ordinance. I think that the District Judge was right in accepting the field books in evidence and allowing Mr. Shipton to draw his deductions therefrom.

It has been said that the very name Aturuwellahenabodahenyaya implies that the henyaya in question is in Aturuwella rather than in Dambadeniya, but, as explained by Mr. Shipton, the name means henyaya alongside the ridge boundary of Aturuwella. That being so, there is nothing in the name itself to negative the idea that the henyaya belonged to Dambadeniya. With regard to the other lots, which are comparatively small and insignificant, I need say no more than that Mr. Shipton's evidence with even greater force establishes the fact that they are not included in the land allotted to the Dalada Maligawa in the Temple Lands Register. Clearly, the preponderance of testimony recorded at the second trial of this case is on the side of the defendant.

I would dismiss the appeal with costs.

DE SAMPAYO A.J.—I agree.

*Appeal dismissed.*