1912.

Present: Lascelles C.J. and De Sampayo A.J.

WEERAKOON *v.* JURIS *et al.*

85—D. C. Galle, 10,541.

Planting agreement—Planter entitled to a fourth of land on planting the land—Is a conveyance necessary after the fulfilment of the condition?—Sale—Ordinance No. 7 of 1840, s. 3.

A conveyance of land may be made to take effect on the fulfilment of a condition.

By a planting agreement attested by a notary it was agreed, *inter alia*, that on the event of the planter planting the land he should be entitled to a fourth share of the soil and trees.

Held, that the planter became entitled to a fourth share of the soil and trees on the fulfilment of the conditions, and that no further conveyance was necessary to vest title on the planter.

THE facts are set out in the judgment. The material portion of the planting agreement was as follows:—

The purport of an agreement for planting caused to be written and granted on this 1st day of September, 1875, is as follows, to wit:—

" That exclusive of about 2½ acres extent, and also the portion of owiti land of the said premises, and described in the planting voucher No. 317 executed in this office, the remaining extent of the said premises is hereby given over to Dangey Dissanhamy, &c., to plant and improve the same with coconut, jak, and other useful trees.

" Therefore it is agreed that within eight years from the date of these presents the said premises should be fully planted, and that when the trees begin to bear fruits, that one-fourth part of such plantation and one-fourth part of the soil of such extent will be entitled (*sic*) to the said seven planters, their heirs, &c."

Bawa, K.C., for first defendant, appellant.

van Langenberg, K.C., for third and fourth defendants and first to sixth added defendants, respondents.

Samarawickreme, for seventh added defendant, respondent.

Cur. adv. vult.

July 17, 1912. DE SAMPAYO A.J.—

This is a partition action, and the appeal concerns a one-fourth share of the property, which is claimed by the first defendant-appellant adversely to third and fourth defendants and the added defendants, who are respondents to this appeal. One Don Louis

Amarasinghe, being the owner of the entire land, granted a planting agreement dated January 2, 1872, to eight persons, four of whom are now represented by the respondents. While the agreement was still on foot, the land was sold in execution against Don Louis Amarasinghe in 1875, and was purchased by one Don Johanis de Silva. Thereupon the planters, being under the impression that the Fiscal's sale put an end to the planting agreement, secured from the execution-purchaser, Don Johanis de Silva, a fresh agreement dated September 1, 1875, containing practically the same terms as the previous agreement, and they also instituted an action against Don Louis Amarasinghe for damages for being deprived of the benefit of his deed in their favour. The Supreme Court, in appeal in that action, by its judgment of 1878, held that that agreement and the planters' rights thereunder were not affected by the Fiscal's sale, and dismissed the action. The planters continued to plant and to be in possession of the land on the footing of the agreement of 1872 or of 1875 or on both of them. Don Johanis de Silva died intestate, leaving as his heir a daughter, who was the wife of the first defendant. In 1891 the first defendant and his wife sold three-fourths shares of the land to one Don Cornelis, from whom the first plaintiff and second defendant claim title to those three-fourths shares.

The plaintiff and the first defendant in this case have not been very straightforward. They ignored altogether the planting agreements, and omitted to make any reference to interests created thereunder. The third, fourth, and fifth defendants, who are three of the original planters, had built substantial houses on the land and were residing therein for a long time, and as they could not be ignored, the plaintiffs in their plaint only made them parties, stating that they were entitled to compensation for those houses. The other respondents to this appeal had to intervene in this action and inform the Court of their claims. The one-fourth share which the respondents claim under the planting agreement was assigned by the plaintiff to the first defendant, who likewise in his answer, omitting all reference to the planters, asserted title to it. All this is the more astonishing, as the first defendant and his wife, in their own deed of 1891, through which the plaintiffs claim, had expressly " reserved to themselves and the planters the remaining one-fourth of the soil and plantations." The first defendant is entitled to no sort of consideration in his contest with the respondents.

Consistently with this disingenuous conduct, first defendant asserted at the trial that the planters had failed to fulfil their obligation under the planting agreements and were therefore not entitled to any interest. But upon the evidence and after personal inspection of the land the District Judge was satisfied that the land was fully planted, except as to a small patch, which, though originally planted, is now bare on account of the peculiar unsuitability of the soil for any successful plantation. No other conclusion could possibly be

1912.

DE SAMPAYO A.J.

Weerakoon v. Juris

drawn in the circumstances of this case, especially seeing that the planters were allowed without question to be in possession for the last forty years and more, and even to alienate shares in the land to strangers, among others to Mr. E. R. Gooneratne, Mudaliyar, who in 1904 built a large schoolhouse on the land. Indeed, at the argument before us counsel for the first defendant did not seriously dispute, that the planters had planted the land, but, in view of the contention presently to be noticed, argued that they were only entitled to compensation in money on the principle of *quantum meruit*, and not to any share of the soil.

The main contention on behalf of the first defendant is that the planting agreements are insufficient of themselves to pass title to the one-fourth share to the planters, that they amount to a mere covenant on the part of the landowner to give a deed on the completion of the plantation, and that no such deed having been given the planters had no title. The first of the planting agreements stipulated that the planters should plant the land within two years and take care of the plantation for the next eight years, and provided that if they did so, they and their heirs, executors, administrators, and assigns should become entitled to one-fourth of the soil and trees for their planting trouble. The second of the planting agreements similarly provided that on the completion of the plantation the planters should be entitled to one-fourth share of the soil and trees, and went on to prohibit the planters from alienating that one-fourth share to strangers, and to reserve to Don Johanis de Silva a right of pre-emption. On the footing that the planters did fulfil their obligation, did or did not the deeds have the effect of vesting title to one-fourth share of the land in the planters? We are very familiar with this kind of planting agreement, and in numerous cases the title of the planters on such deeds has been conceded without any question.

Unless we are forced by law to construe the deeds as contended for the appellants, it would obviously be unjust to deprive the respondents of the share which it was manifestly intended they should have, and which they have undoubtedly possessed for over forty years. The respondents in their answer claimed the one-fourth share by prescription as well as upon the deeds, but unfortunately no issue was framed at the trial on the question of prescription, and for that reason the learned District Judge declined to decide that question. But in a partition case, as this is, the framing of issues is not of much consequence, and if I were free to deal with the point, I should say, even as the case stands, that the respondents have established a good prescriptive title. But I am content to rest my judgment on a decision of the point actually raised. The Ordinance No. 7 of 1840 no doubt requires a notarial instrument for the conveyance of any interest in land. There is such a deed in this case, but it is contended that a conveyance could only be of a title *de*

presenti, and that where, as in this case, the title was to vest in the future, the deed could be taken only as an agreement to convey, and not as a conveyance in itself. No authority has been cited in support of this argument, and I know of none. Conditional sales, having the effect of passing title on the fulfilment of the conditions, are well known to the Roman-Dutch law. This is in no way affected by the Ordinance No. 7 of 1840 or by any other Ordinance, nor do I see that a conveyance of land to take effect on the fulfilment of a condition is contrary to principle. In the Civil law there is a distinction between the contract of sale and its consummation, the latter consisting in the delivery of the subject-matter to the purchaser. The planters in this case having been allowed to continue in possession after the period stipulated for the completion of the plantation, there was consummation of the contract of sale, and their title was thus perfected. In this connection I may say that Mr. Bawa for the first defendant argued that the agreements did not amount to a sale, as a sale could only be for a price in money, and that they were in fact innominate contracts of the species *do ut facias*. Even so, the question only is whether the planters fulfilled their part of the contracts; and, as I said before, they undoubtedly did.

The only other point I need notice is the objection that these agreements were not stamped with stamps of the value required for conveyances, and that they were not admissible in evidence. This point was not raised in the Court below, nor was it in any way shown that the instruments did not in fact bear the proper stamps according to the Stamp laws then prevailing. Moreover, section 37 (1) of Ordinance No. 22 of 1909 enacts that where an instrument has been admitted in evidence, such admission shall not (subject to an exception which does not apply to this case) be called in question at any stage in the same suit or proceeding on the ground that the instrument has not been duly stamped. The agreements were admitted in evidence without objection, and the appellant is not entitled to object to them now.

In my opinion the judgment of the District Judge, holding that the respondents are entitled to the one-fourth share in dispute, is right, and should be affirmed with costs.

LASCELLES C.J.—I quite agree.

Affirmed.