The following is the case referred to in the above judgment :—

WIJEWARDENE *v.* DON JOHN.

313—D. C. Colombo, 27,445.

H. J. C. Pereira, for the appellant.

A. St. V. Jayewardene, for the respondent.

April 22, 1910. WOOD RENTON J.—

In this case the only question that we have to decide is whether the learned District Judge was wrong in holding that there is sufficient evidence from the conduct of the first defendant to show that, equally with the second, he was in law and in fact in possession of the land in dispute at the date of the institution of the action. I have listened as carefully as possible to what Mr. H. J. C. Pereira has urged with a view to impeaching the decision of the learned District Judge on this point, but I think that he was right in the conclusion at which he arrived, and, in any event, it is impossible for us on the material before us to say that he was wrong. In the first place, we must take account of the adverse view formed by the District Judge in regard to the first defendant-appellant's credibility. In addition to that, there are other circumstances to which he alludes specifically in his judgment, and which point to the first defendant-appellant's connection with the land. It will be sufficient to refer to the lease, to the delay in its registration, to the fact that in the deed of August 3, 1896, he is named as the lessor's agent for the purposes of receiving the rents, and, in the last place, to the first defendant-appellant's failure to reply to a letter written to him on June 22, 1908, by the proctor of the plaintiff-respondent, clearly asserting that he was then in possession of the land, and calling upon him to withdraw from it on pain of legal proceedings. It was held in the English case of *Wiedeman v. Walpole* (*supra*) that, in an action for breach of promise of marriage, the mere fact that the defendant did not answer letters written to him by the plaintiff, in which she stated that he had promised to marry her, was no evidence corroborating her testimony in support of such an alleged promise, as required by section 2 of the Statute 32 and 33 Victoria, chapter 68. In that case, however, the Court had no evidence save defendant's omission to reply to the letter, whereas here we have the various points which I have already referred to, and which tend to bring the first defendant-appellant into direct contact with the land in suit. It

[1] *(1910) S. C. Min., April 22, 1910.*

was pointed out, moreover, by Lord Esher, Master of the Rolls, in the case of *Wiedeman v. Walpole* (*supra*) that there were circumstances, for example, in business and mercantil elitigations, in which the Courts have taken notice that, in the ordinary course of business, if one man of business states in a letter to another that he has agreed to do certain things, the person who receives that letter must answer if he means to dispute the fact that he did so agree. It appears to me that the present case falls within the category indicated by Lord Esher in the passage, the effect of which I have just summarized. We have here the formal letter of demand written by the plaintiff-respondent's proctor to the first defendant-appellant, clearly stating that he was in possession of the land belonging to his client, and that lega proceedings would be instituted if he did not withdraw. It was a land with which the evidence shows that the first defendant-appellant had been in various ways connected, and I think that the learned District Judge was right in drawing, from his omission to reply, the adverse inference that the facts alleged in it were true. On the grounds I have stated I would dismiss the appeal, with costs.

GRENIER J.—I agree.

Appeal dismissed.