1943 *Present :* **Moseley A.C.J. and Keuneman J.**

PUNCHI NAIDE, Appellant, *and* DINGIHAMY, Respondent.

323—D. C. Kandy, 611.

Estoppel—Permit to believe—Meaning of expression—Evidence Ordinance, s. 115.

The expression "permit to believe" in section 115 of the Evidence Ordinance means permit to continue in a belief already formed.

APPEAL from a judgment of the District Judge of Kandy.

N. Nadarajah, K.C. (with him *H. W. Tambiah*), for the plaintiff, appellant.

E. B. Wickremanayake, for the defendant, respondent.

Cur. adv. vult.

June 22, 1943. MOSELEY A.C.J.—

The plaintiff-appellant sued defendant-respondent for declaration of title to an undivided half share of a piece of land and for an order of ejectment and damages. He succeeded in his claim for declaration of title but otherwise failed, and he was ordered to pay the respondent's costs.

The land originally belonged to one Dingiri Naide who had as his mistress Ran Etana, by whom he had four children. On his death the land devolved upon the children in equal shares. By deed, P 5 of 1932, Ran Etana and the children conveyed the land to the appellant who had previously married one of the daughters, Ukku Etana. In 1915, however, Ran Etana had leased the property to the respondent for a term of fifteen years with an option in favour of the respondent of a renewal for a like term. This option was exercised in 1923, and the case for the respondent

is that he did so at the request of the appellant and upon certain representations made by the latter. In view of these alleged representations the respondent claimed that the appellant is estopped from denying the validity of the lease in 1923, and that he (respondent) is entitled to remain in possession.

The issue relevant to this point was framed and answered as follows :—

"10. Did the plaintiff during the pendency of the said lease (*i.e.*, of 1915) represent to defendant—

(*a*) that Ran Etana was the lawful widow of the deceased Dingiri Naide ?

Answer : No, it was taken for granted ;

(*b*) that she had the right to lease the land in dispute ?

Answer : Yes ;

(*c*) that money was required for his marriage with Ran Etana's daughter ?

Answer : Yes."

The answer to part (*a*) of the issue is amply supported by the evidence. It is, I think, common ground that, certainly up to 1923, it was generally believed that Dingiri Naide and Ran Etana were man and wife. Had that been a fact, since Dingiri Naide died intestate, his widow would have been entitled to a life-interest and she would have been entitled to grant a lease of the land. It is contended by Counsel for the appellant that the answers to part (*a*) and (*b*) of the issue are contradictory, and that since part (*a*) was answered in the negative, part (*b*) should have been similarly answered. I do not think that this contention will bear examination. The answer to part (*a*) is reflected in the judgment as follows :—"I do not believe plaintiff represented to defendant that Ran Etana was married as there was no necessity to do so, for defendant had already on lease 230 of 1915 (P 3) leased the land from Ran Etana on that footing and I feel sure every one presumed Ran Etana was married to Dingiri Naide and gave no thought to the question when lease 406 (P 4, *i.e.*, the lease of 1923) was entered into." The learned District Judge, however, accepted the defendant's evidence that the appellant was responsible for the second lease and agreed to it. It seems to me, that being the learned District Judge's frame of mind, that he was being meticulously, although unnecessarily, fair to the appellant in answering part (*a*) in the negative. Section 115 of the Evidence Ordinance brings estoppel into operation against a person who has "by his declaration, act, or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief", and the fact that every one presumed that Dingiri Naide and Ran Etana were married does not relieve the appellant from the disability conferred by the section upon one who permits another to believe a thing to be true and to act upon that belief. It seems to me that, in answering part (*a*) as he did, it was merely the intention of the learned District Judge to acquit the appellant of the allegation that he had made a positive declaration on the point. Counsel for the respondent interpreted the words "permit to believe" as meaning to permit to continue in a belief already formed, a reasonable interpretation in my opinion.

I do not think that the case cited by Counsel for the appellant, *Kanthappan v. Eliatamby*[1], assists his case in any way. I am also of opinion that the respondent has discharged the burden of proof which lies upon a representee as set out in *Spencer Bower on Estoppel* (*1923 ed., para. 138*).

I would therefore dismiss the appeal with costs.

KEUNEMAN J.—I agree.

Appeal dismissed.