1941 *Present:* **Howard C.J. and Soertsz J.**

ANEES *v.* BANK OF CHETTINAD.

269—D. C. Colombo, 1,091.

Partition—Fidei commissum *property—Partition action by fiduciaries—Decree entered without reference to* fidei commissum—*Sale by fiduciaries—Purchase without notice of* fidei commissum—Fidei commissum *wiped out by partition decree—Partition Ordinance, s. 9.*

Where property subject to a *fidei commissum* is partitioned without reference to the *fidei commissum* and the title obtained under the decree by a fiduciary is transferred to a *bona fide* purchaser without notice,—

Held, that the purchaser obtained a valid title free from the *fidei commissum.*

Kusmawathi v. Weerasinghe (33 N. L. R. 265), followed.

Babey Nona v. Silva (9 N. L. R. 251), distinguished.

Held, further, **that where a deed of gift provided *inter alia* that the said donee nor "her heirs and descendants shall not under any plan or pretext whatsoever, sell, mortgage or alienate the said premises hereby given and granted but that the same shall be possessed and enjoyed by the said donee and her heirs and descendants in perpetuity under the bond of *fidei commissum*", the deed created a valid *fidei commissum*.**

***Coudert v. Don Elias* (*17 N. L. R. 129*), followed.**

APPEAL from a judgment of the District Judge of Colombo. The facts are stated by him as follows :—

"The original owners of the property were Hassan Lebbe and Hadji Umma who by deed No. 10807 dated May 21, 1859 (P 3) gifted it to their grand-daughter Kadija Umma *alias* Mohideen Natchia subject to a *fidei commissum* in favour of her heirs and descendants. Kadija Umma was married to one Ahamado Ali and had two daughters Sevata Umma and Safia Umma and on the death of Kadija Umma in 1869 the property vested in them in equal shares. But in 1903 Ahamado Ali suppressing deed No. 10877 (P 3) which was unregistered executed a deed No. 522 of September 25, 1903 (D 1) claiming to be the owner of the said land by right of prescriptive possession. This deed was duly registered. Thereafter by the deeds of gift No. 544 of November 6, 1903, and No. 546 of November 7, 1903 (D 2 and D 3) he purported to gift the said land in equal shares to his daughters Sevata Umma and Safia Umma. Sevata Umma by deed No. 515 of November 29, 1907 (P 7) gifted her share to her daughter Saleema. On November 19, 1914, Safia Umma instituted action No. 38517 of this Court to partition the land between herself and Saleema Umma without reference to any *fidei commissum* or to deed No. P 3 and under the final decree lot B was allotted to Saleema Umma. Sevata Umma died in 1931 leaving her surviving two children, the plaintiff and the first defendant, and the children of Saleema Umma, the second and third defendants. Plaintiff claims that on the death of Sevata Umma lot "B" devolved on plaintiff and the first, second, and third defendants under the *fidei commissum* created by deed P 3.

The fourth defendant contends that the deed did not create a *fidei commissum* and that, in every event, it was invalid according to Muslim law. He further contends that the decree in the partition action gave absolute title to Safia Umma and Saleema free from any *fidei commissum* and claims the entire land absolutely on the title set out by him."

The District Judge held that the deed P 3 interpreted according to Muslim law was invalid as possession of the property was not given at the time of its execution. In view of this finding he did not consider it necessary to deal with the other points raised. He, however, held that if the deed of gift was held valid, it created a *fidei commissum*.

N. Nadarajah (with him *E. B. Wikremanayake* and *R. N. Ilangakoon*), for plaintiff, appellant.

H. V. Perera, K.C. (with him *N. E. Weerasooria, K.C., N. K. Choksy* and *A. C. Nadarajah*), for fourth defendant, respondent.

June 4, 1941. HOWARD C.J.—

This was an action for a declaration of title in favour of the plaintiff and the first, second, and third defendants to certain property subject to a *fidei commissum*. The action was brought by the plaintiff who asked,

moreover, that the said property should be sold under the provisions of the Partition Ordinance. The plaintiff based his title on a deed No. 10807 of May 21, 1859, P 3, by which Mahallam Hassen Lebbe and Hadji Umma the original owners of property including the land in dispute dealt with it in the following terms :—

"Know all men by these presents that we Hadji Umma and Mahallam Hassen Lebbe husband and wife, both residing at Marendahn in Colombo for and in consideration of the love and affection which we have unto our grand-daughter Mohideen Natchia, daughter of Hassen Lebbe Sinne Lebbe Marikar and for other causes and considerations us hereunto specially moving have given, granted, assigned, transferred and set over as we do hereby give, grant, assign, transfer and set over unto the said Meyedin Natchia as a gift absolute and irrevocable but under and subject to the terms and conditions hereinafter set forth and declared (*follow the particulars and boundaries of the parcels in question*).

To have and to hold the said premises with all and singular the appurtenances thereunto belonging unto her the said Mohideen Natchia upon the following terms and conditions, that is to say, that the said Hadji Umma and Mahallam Hassen Lebbe during their mutual lives shall have the free use, possession and occupation of the hereby granted premises that the said Mohideen Natchia nor her heirs and descendants nor her husband shall not under any plan or pretext whatsoever sell mortgage or alienate the said premises hereby given and granted nor rents issues and profits thereof but that the same shall be possessed and enjoyed by the said Mohideen Natchia and her heirs and descendants in perpetuity under bond of *fidei commissum* that the said property hereby given and granted nor the rents issues and profits thereof shall not at any time be liable to be attached, seized or sold for any debt of the said Mohideen Natchia or that of her husband or of her heirs and descendants.

Provided always that nothing herein contained shall prevent the said Meyedin Natchia by deed or testamentary disposition to give and grant the said premises or any part thereof to any of her children but the same must be given and granted strictly under and subject to all the restrictions as are hereinbefore expressed ; otherwise such grant shall be null and void and provided that if the said Meyedin Natchia should die without having any children or without leaving any heirs then and in that case the said property hereby given and granted shall go to and be the property of the Moorish Mosque at Marandahn under the said restrictions."

Kadija Umma *alias* Mohideen Natchia, the grand-daughter of the donors under this deed, was married to one C. L. M. Ahamado Ali and had two children, Sevata Umma and Safia Umma. On September 15, 1903, the said C. L. M. Ahamado Ali registered a document No. 522 that purported to be a declaratory act declaring himself entitled to the property dealt with by P 3. By deeds dated November 6 and 7, 1903, the said C. L. M. Ahamado Allie gifted the same property in equal shares to the said Sevata Umma and Safia Umma. By deed dated October 29, 1909, the said Sevata Umma conveyed the property to her daughter Saleema. On may 19, 1914, the said Safia Umma brought an action

No. 38,517 D. C., Colombo, for the partition of the said property. By final decree in the said action dated August 24, 1915, the said Saleema Umma was declared entitled to the property that is the subject-matter of this action. The said Saleema Umma died on June 18, 1931, leaving two children, I. L. M. Anees, the plaintiff, and I. L. M. Sameer, the first defendant. The said Saleema Umma, the other daughter of the said Sevata Umma, had predeceased the latter in 1915 leaving two children Burhan Mohideen, the second defendant, and Sitti Ralia, the third defendant. The fourth defendant was made a party to this action by the plaintiff as he claims to be entitled to and is in fact in possession of the property. He bases his claim through the rights obtained by Saleema Umma in Partition Action No. 38,517 hereinbefore mentioned. By mortgage bond No. 7438 dated April 25, 1910, the said Saleema Umma mortgaged the undivided half share of the property dealt with by P 3 to one P. S. S. M. K. Kathiresan Chetty. By the above-mentioned partition decree she was awarded the property in dispute. On or about November 16, 1916, she died intestate and letters of administration were granted to her husband, S. D. M. Burhan. By a series of documents ending with deed No. 2554 dated March 11, 1931, the rights, title and interest of Saleema Umma and Safia Umma passed to the fourth defendant who claims that he is a *bona fide* purchaser for value without notice of the alleged *fidei commissum* hereinbefore mentioned. The learned District Judge held that the deed P 3 interpreted according to Mohamedan law was invalid inasmuch as possession of the property was not given at the time of its execution. In coming to this conclusion he stated that he was bound not only by the ruling of the Privy Council in *Weerasekera v. Pieris*[1], but also by the interpretation of this ruling by the Supreme Court in *Sultan v. Pieris*[2]. In view of his finding on this point, the learned District Judge did not consider it necessary to deal with the other points raised. He did, however, state that, although there may be some difficulty in ascertaining the actual beneficiaries, the deed P 3 did contain a sufficient designation of such beneficiaries and if valid, P 3 did create a valid *fidei commissum*. The learned District Judge applied to the facts of this case what he regarded as the principle laid down in *Tillekeratne v. Abeysekera*[3], *Abeysundera v. Abeysundera*[4], and *Babey Nona v. Silva*[5]. In so applying this principle he held that the title of Saleema Umma and Safia Umma was subject to the *fidei commissum* in spite of the decree for partition and the fourth defendant who had purchased those interests was in no better position.

The arguments on this appeal have centred round three questions as follows :—

(*a*) Was the validity of P 3 to be decided by the priciples of Mohamedan law ?

(*b*) Did P 3 create a valid *fidei commissum* ?

(*c*) If a valid *fidei commissum* was created, is it binding on the fourth defendant whose title is based on the decree of August 24, 1915, in the partition action No. 38,517 ?

[1] *24 N. L. R. 281.*
[2] *35 N. L. R. 76.*
[3] *2 N. L. R. 313.*
[4] *12 N. L. R. 373.*
[5] *9 N. L. R. 251.*

In order to come to a correct conclusion on (c) a careful scrutiny of the authorities is necessary. Section 9 of the Partition Ordinance (Cap. 56, Leg. Enactments of Ceylon) is worded as follows:—

"9. The decree for partition or sale given as hereinbefore provided shall be good and conclusive against all persons whosoever, whatever right or title they have or claim to have in the said property, although all persons concerned are not named in any of the said proceedings, nor the title of the owners nor of any of them truly set forth, and shall be good and sufficient evidence of such partition and sale and of the titles of the parties to such shares or interests as have been thereby awarded in severalty:

Provided that nothing herein contained shall affect the right of any party prejudiced by such partition or sale to recover damages from the parties by whose act, whether of commission or omission, such damages had accrued."

The phraseology employed in this provision is definite and uneqivocal leading to the inevitable conclusion that a decree of the Ordinance vested absolute and indefeasible title wiping out all titles and interests not protected by the decree. That this was the view so held is apparent from Jayewardene's Partition in Ceylon, 2nd Edition, pp. 213 and 214. In *Tillekeratne v. Abeysekera*[1], this view so widely held and with such justification was in an *obiter dictum* by their Lordships of the Privy Council deemed to be untenable. The case before the Privy Council was concerned with the question whether by virtue of the *jus accrescendi* the defendants were entitled to certain shares of the property which they claimed under a will creating a *fidei commissum*. It had nothing to do with the Partition Ordinance. The *obiter dictum* that has had such devastating effect on the preconceived views as to the indefeasibility of titles acquired under the Partition Ordinance was as follows:—

"Not one of these enactments professes to deal with or alter the law of *fidei commissum*, and in their Lordships' opinion they cannot be construed as having that effect. The first and second of them appear to be limited to cases in which the persons interested, whether as joint tenants or as tenants in common, are full owners, and are not burdened with a *fidei commissum;* and even if they were not held to be so limited, the partition which they authorise would not necessarily destroy a *fidei commissum* attaching to one or more of the shares before partition."

The first successful attack on titles based on a partition decree was made in the case of *Babey Nona v. Silva* (*supra*). In this case the land in dispute was donated by one Maria Silva to her three children subject to a *fidei commissum* in favour of their lineal descendants from generation to generation. As the result of a partition action a portion of the land, lot B, was allotted to Diyonis Silva one of the donor's children. Lot B was sold under writ and bought by the defendant, another of the donor's children. Diyonis Silva died a few months prior to the action leaving five children who in asking for a declaration of title claimed that on the death of their father lot B came to them under the *fidei commissum*, It was held by the Court, Lascelles A.C.J. and Middleton J., that the

[1] *(1897) 2 N. L. R. 312.*

partition decree did not enlarge the life interests of the fiduciarius—Diyonis—into absolute ownership. In coming to this conclusion Lascelles A.C.J. cited the decision of Lord Watson in *Tillekeratne v. Abeysekera* (*supra*) that " the partition . . . . would not necessarily destroy a *fidei commissum* attaching to one or more shares before partition ". The partition decree operated subject to the conditions of the *fidei commissum* and in no way prejudicially affected the rights of the plaintiffs as *fidei commissaries* under the deed. It will be observed that the decision turned on the fact that it was the fiduciarius who became entitled to the plot in dispute on partition and that the defendant in purchasing this plot bought knowing that it was subject to a *fidei commissum Babey Nona v. Silva* (*supra*) was considered in *Abeysundera v. Abeysundera* (*supra*) another of the cases cited by the learned District Judge. This case is merely an authority for the proposition that land subject to a *fidei commissum* may be partitioned or sold under the Partition Ordinance. The judgment in *Babey Nona v. Silva* (*supra*) was next followed in the case of *Weerasekera v. Carlina*[1]. The facts in this case were indistinguishable from those in *Babey Nona v. Silva* (*supra*) and Counsel in arguing that the *fidei commissum* was extinguished by the partition decree could only contend that this latter case should be given reconsideration as it is in conflict with section 9 of the Partition Ordinance.

The next case requiring consideration is that of *Marikar v. Marikar*[2]. Before the decision in this case, however, in *Babunona v. Cornelis*[3] the plaintiffs sought to compel the defendants to convey to them land which had been allotted to the defendant under a partition decree but which had been purchased by him in trust for the plaintiffs. The Supreme Court held that the right of the plaintiffs to the land had been extinguished by the partition decree and that they were only entitled to a decree for damages against the defendant. This decision was followed in *Fonseka v. Fonseka*[4]. For the review of these two decisions a special Court composed of three Judges was constituted to hear *Marikar v. Marikar* (*supra*). The question that arose for the decision was whether a trust, express, or constructive, is extinguished by a decree for partition or whether it attaches to the divided portion which on the partition is assigned to the trustee. It was held by the Court, Bertram C.J., Shaw and de Sampayo JJ., that the principle underlying the decisions with regard to the partition of *fidei commissum* property apply and where once a divided portion is assigned to the trustee in respect of the undivided share, which was the subject of the trust, the object of the Partition Ordinance to put an end to undivided ownership of land is carried out, but the rights and obligations of the trustee and beneficiary *inter se* remain as they were. *Marikar v. Marikar* (*supra*), is, therefore, an authority for an extension of the principle laid down by *Tillekeratne v. Abeysekera* (*supra*), *Babey Nona v. Silva* (*supra*), and *Abeyesundera v. Abeyesundera* (*supra*), by its application not only to *fidei commissum* property, the subject of a partition action, but also to property held under a trust. It cannot be regarded as a further extension of the principle

[1] *16 N. L. R. 1.*
[2] *22 N. L. R. 137.*
[3] *14 N. L. R. 45.*
[4] *(1891) 9 S. C. C. 198.*

with regard to *fidei commissa* as formulated in the three cases I have mentioned. At the same time a passage in the judgment of Bertram C.J. might lead to such an inference. With reference to *Babey Nona v. Silva* on page 139 he used the following words:—

> "In the former case" (referring to *Babey Nona v. Silva* (*supra*)), the Court went further. Here the property had been partitioned without reference to the *fidei commissum*, and the share allotted to the fiduciary in severalty was bought at a Fiscal's sale, apparently by a *bona fide* purchaser without notice. It was, nevertheless, held that, notwithstanding the partition, the *fidei commissum* attached to the divided share in the hands of the purchaser."

Careful scrutiny of the facts in *Babey Nona v. Silva* (*supra*) indicates that the learned Chief Justice was in error in stating that in that case the share allotted to the fiduciary was bought by a *bona fide* purchaser without notice. Such share was purchased by another of the fiduciaries and hence a purchaser with express notice. The proposition formulated by the Chief Justice in the next paragraph of his judgment—"that the partition decree operates subject to the conditions of the *fidei commissum*, which thus attach to the interest in severalty. It is immaterial whether the *fidei commissum* is mentioned in the decree or not, it binds the property in the hands of a purchaser whether with or without notice"—is not only *obiter* but is based on inaccurate premises and therefore cannot be regarded as binding. In this connection the facts in *Marikar v. Marikar* (*supra*) do not indicate that the rights of a *bona fide* purchaser for value without notice were involved.

The last case that requires consideration is that of *Kusmawathi v. Weerasinghe*[1] where the law was subjected to a meticulous scrutiny by Macdonell C.J. The facts were as follows: In 1889 G donated by deed, duly registered, an undivided half share of a land to her son A "as a gift *inter vivos* . . . . to have and to hold the said premises subject to the following conditions:—(1) That the gift shall take effect after my death; (2) that the donee shall not alienate, sell or encumber the property; (3) the shares of land gifted should, after the death of the donee, descend to his children or their descendants by representation according to law". G remained in possession and in 1907 obtained title under a partition decree to a portion in severalty of the land, representing the undivided portion half interest on which she had dealt with in 1889, A being a party to the partition action. Thereafter G sold the land to the defendant's predecessors in title, reciting in her conveyance her title under the partition decree. G died in 1912 and A in 1927. The action was brought by the heirs of A claiming under the *fidei commissum*. Whereas in *Babey Nona v. Silva* (*supra*) it was a fiduciarius who claimed title under a partition decree that was claimed to have extinguished the *fidei commissum*. In *Kusmawathi v. Weerasinghe* (*supra*) the defendant claimed title under the partition decree from a person who was not a fiduciarius. The plaintiffs contended that the deed of gift created a *fidei commissum* and had the effect of vesting the property in A at the time of execution. Hence the partition decree cannot enlarge

[1] *33 N. L. R. 265.*

the usufructuary right G possessed to absolute dominium as the decrees do not wipe off a *fidei commissum* when once such a charge is impressed on the land. It was held by Macdonell C.J. and Garvin S.P.J. that the defendant had the superior title. Inasmuch as G was not deemed to be in the position of a fiduciarius, the case was not covered by the principle laid down in *Babey Nona v. Silva* (*supra*) and extended by *Marikar v. Marikar* (*supra*). As, however, it was argued that, as *fidei commissarii* cannot be parties to a partition action, they must be protected otherwise and that this protection is to be given by making the burden of the *fidei commissum* valid as against a third party, even though he purchased the property affected by the *fidei commissum* for value and without notice. Macdonell C.J. dealt comprehensively with the law as formulated in the cases I have mentioned. He was unable to accept the contention that *Babey Nona v. Silva* (*supra*) decided that on a purchase from the fiduciarius who has a partition title, the *fidei commissum* runs with the land even though the purchaser has no notice of the *fidei commissum*. He was also of opinion that, as the defendant in *Babey Nona v. Silva* (*supra*) was a purchaser with express notice, it did not support the proposition that purchase without notice is no bar to the *fidei Commissarius's* rights. Hence *Babey Nona v. Silva* (*supra*) was no authority for the proposition that a *fidei commissum* can be enforced against a purchaser from a fiduciarius who has a partition title, that purchaser having no notice of the *fidei commissum*. The learned Chief Justice further stated that he had been unable to find any other case which does establish that proposition and the point was open for decision.

The case now presented is, therefore, the first in which the question as to whether a *fidei commissum* can be enforced against a purchaser from a fiduciarius who has a partition title, that purchaser having no notice of the *fidei commissum*, arises for decision. Although the remarks of Macdonell C.J. in *Kusmawathi v. Weerasinghe* (*supra*) on this question were, as he himself stated, *obiter* they are of considerable value in enabling me to reach a decision. I have given careful consideration to the case of *Babey Nona v. Silva* (*supra*) and have come to the same conclusion as that reached by Macdonell C.J. that this case does not decide that a *fidei commissum* attaches to the land sold by the fiduciarius. It decides that a purchaser from such a fiduciarius with knowledge of the *fidei commissum* cannot hold the land purchased as against a *fidei commissarius*. In other words a man cannot hold what he knows he has no right to. The words of section 9 of the Partition Ordinance which give "A title good and conclusive against all persons whatsoever" are clear enough. Inroads have already been made by the cases I have cited on the indefeasibility of title always thought to be conferred by this section. Like Macdonell C.J. I do not consider it necessary or desirable to make any further inroads on the plain words of the section. Nor does the law as formulated in the decided cases warrant any such inroad. I am, therefore, unable to accede to the contention of Council for the appellant so far as this question is concerned and hold that the learned District Judge's finding thereon cannot be upheld.

Although my decision on question (c) disposes of the case in favour of the respondent, I have thought it desirable to add a few words on the

other questions raised in this appeal. (*b*) raises the question as to whether a valid *fidei commissum* was created by P 3. It has been contended by Mr. Perera that the learned District Judge came to a wrong conclusion in finding that P 3 created a valid *fidei commissum.* He maintained that the use of the words "shall be possessed and enjoyed by the said Meyedin Natchia and her heirs and descendants in perpetuity under bond of *Fidei Commissum*" may have shown some intention to create a *fidei commissum* on the part of the donor, but that the prohibition against alienation does not indicate a sufficient designation of the parties to be benefited so as to constitute a valid *fidei commissum.* Numerous cases decided by the Ceylon Courts are available to assist me in arriving at a conclusion as to whether P 3 created a valid *fidei commissum.* In *Aysa Umma v. Noordeen*[1] the use of the word "assigns" as persons in whose interest the prohibition was made meant that they may be anybody in the world and hence there was no designation of persons such as was essential to the creation of a *fidei commissum.* In *Coudert v. Don Elias*[2], the words imposing the prohibition were as follows: "provided always that the said garden and buildings shall not at any time be sold, mortgaged or in any other manner alienated, but shall be only held, possessed, and enjoyed by them and their heirs and descendants in perpetuity under the bond of *fidei commissum* and that the rents, issues and profits . . . . and provided also that on failure or extinction of heirs, the said garden and buildings shall revert to and become the property of the Roman Catholic Church of St. Lucia." In his judgment Pereira J. stated that it was manifest that the words "in perpetuity under the bond of *fidei commissum*" and the words "on failure or extinction of heirs the said garden and buildings shall revert to and become the property of the Roman Catholic Church of St. Lucia" indicate an intention to create a *fiedi Commissum.* The Court held that a valid *fidei commissum* was thus created. In *Pinnwardene v. Fernando*[3] the operative words were as follows: "In this manner after our death, they shall take charge of their respective properties as we have ordained, and they, their children, grand children, heirs and representatives descending from them shall possess the same; but they shall not sell or alienate the said properties in any manner or cause the same to be subject to any mortgage or security. Should such an act be committed the right of the person who sells or alienates the lands or land . . . . shall cease, and it is ordained that the same shall go to the Crown". In holding that these words created a valid *fidei commissum* de Sampayo J. (with him Schneider A.J.) expressed the opinion that the use of the word "heirs" as synonymous with "descendants", who are naturally the heirs of a man, is not uncommon amongst the Sinhalese. He also adopted the dictum of Shaw J. in *Mirando v. Coudert*[4] that the document must be looked at as a whole and if the intention to create a *fidei commissum* were clear, effect should be given to it, though there might be in the document expressions inconsistent with a *fidei commissum.* The same view with regard to the use of the words "heirs" to mean descendants was expressed by the same Judge in *Government*

[1] *6 N. L. R. 173.*
[2] *17 N. L. R. 129.*
[3] *21 N. L. R. 65.*
[4] *19 N. L. R. 90.*

Agent, Central Province v. Silva[1]. With regard to P 3 I find myself in the position of having to construe phraseology very similar to that employed in *Coudert v. Don Elias* (*supra*). As in that case there was also a reference to "a bond of *fidei commissum*" and a charitable gift of the property on failure of heirs. In these circumstances I am unable to distinguish the facts of this case from those of *Coudert v. Don Elias* (*supra*) and am of opinion that on this question the learned District Judge was right in holding that P 3 created a valid *fidei commissum*.

In view of my decision on question (c) and having regard to the numerous decisions on the matter that have recently found their way into the reports, I do not consider it either necessary or desirable to add to the already voluminous case law on the subject by an expression of opinion with regard to question (*a*).

For the reasons I have given in this judgment the appeal is dismissed with costs.

SOERTSZ J.—

I am in entire agreement with the answers given by My Lord the Chief Justice to questions (*b*) and (c). In regard to question (*a*) I would take this opportunity to say that if it had been necessary to answer it, I should have felt bound by the interpretation given by a Divisional Bench of this Court in *Sultan v. Pieris*[2] of the ruling of the Privy Council in *Weerasekera v. Pieris*[3] but that I do not agree with that interpretation. In my judgment, the point that arose in the former case, and in question (*a*) in this case, is clearly within the rule laid down by their Lordships of the Privy Council in the latter case.

Appeal dismissed.

[1] *24 N. L. R. 62.* [2] *35 N. L. R. 57.* [3] *34 N. L. R. 281.*