1920.

Present: De Sampayo J. and Loos A.J.

PERERA *v.* FERNANDO.

362—D. C. Negombo, 13,243.

Prescription—When possession of one part of a land is possession of whole area—Fencing encroachment in with one's land—Possession of encroachment.

Twenty-five years ago A took a strip of land belonging to the adjoining block, fenced it with his land, and dug holes and planted some coconut trees. This portion soon reverted to jungle, and A cultivated only his own land up to the true boundary.

Held, in the circumstances of this case, A had not acquired title to the strip by prescription.

Acts done by a person on any part of an area may, in certain circumstances, be evidence of the possession of the whole of it for the purposes of establishing title by prescription.

THE facts appear from the judgment.

A. St. V. Jayawardene, for defendant, appellant.

H. J. C. Pereira (with him *R. L. Pereira*), for plaintiff, respondent.

March 31, 1920. DE SAMPAYO J.— 1920.

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The subject of the dispute in this case is a strip of land marked X in the plan No. 1,358 filed of record. The plaintiff is the admitted owner of the land to the east of it, and the defendant the owner of the land to the west of it. It has been proved, and it is not now disputed, that the strip of land marked X fell within the plaintiff's title and was part of the land to the east. The defendant, however, depends on prescription. The portion X is and has been for the last twenty-five years in jungle, but it is contended on his behalf that the defendant's father, Siman Fernando, under whom the defendant claims, had encroached upon this portion and included it in his land to the west, and that his possession of the land to the west is possession also of the disputed portion, though there was no specific act of possession done on it during the period mentioned. In *Lord Advocate v. Blantyre*,[1] which was a claim of right to a tract of foreshore as part of a barony, Lord Blackburn observed, " all that tends to prove possession, as owners, of part of the tract tends to prove ownership of the whole," and " if the barons possessed one part as owners, they possessed the whole." See also *Clark v. Elphinstone*,[2] which related to a piece of forest land lying between two estates. The Privy Council there said that if the boundary was established by agreement as claimed by the defendant, " the piece of land in dispute became a part of the entire area of the defendant's estate, so that acts done on any part of that area would be evidence of the possession of the whole of it." This principle being accepted, the question is whether the facts entitle the defendant to rely on it in this case. It must be shown, for this purpose, that during the necessary period of prescription the defendant or his predecessors intended to keep the strip of land as their own, and constructively possess it by possessing their land to the west. It is asserted that in 1895, when Siman Fernando bought the land to the west, he took in the portion in question, made a fence on the eastern boundary of it, and planted it with coconuts. The defendant also tried to make out that further clearings were made in 1901 and 1906 or 1907 and coconuts were again planted, but he signally failed to satisfy the Court on this point. As regards the planting in 1895, all that the District Judge says is that " it is possible that shortly after the defendant's father bought the 10-acre block in 1895 he did encroach upon the portion X on its eastern boundary, digging holes and planting some trees. Perhaps he also then planted some *hik* trees now to be found and seen at my inspection of the land along the eastern boundary of lot X." This is not quite a definite finding in defendant's favour. In any case, the District Judge has distinctly found that beyond that single act there was nothing done on the portion X since that time, that it reverted to jungle, which is now

[1] *L. R. 4 A. C. 770.* [2] *L. R. 6 A. C. 165.*

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about twenty-five years old, and that, in effect, it was abandoned by Siman Fernando, who thereafter kept clear and cultivated only his own land up to the true boundary. The row of *hik* trees existing at intervals is claimed as still constituting a fence. But it is impossible to allow this. The *hik* trees, no doubt, naturally grew up and still remain there, but no fence was ever maintained. It was suggested that there was no abandonment, but that as the portion X was not suitable for coconuts, it was convenient to keep it as jungle for cutting sticks from. But there is no evidence to support this suggestion; on the contrary, the defendant's act in cutting out the rubber plants put in by plaintiff and planting coconut plants just before the action shows that in his estimation the land was better for coconuts than for rubber. Now, if we approve of the finding as to abandonment, as we must, it follows that since the first attempt at plantation in 1895 the defendant's father had no intention to keep this strip of land and to possess it as his own. It results from this that the principle of possessing the whole within an enclosed or defined area by possessing a part is inapplicable.

In my opinion the judgment of the District Judge is right, and I would dismiss the appeal, with costs.

LOOS A.J.—I agree.

Appeal dismissed.