

1943

*Present : Hearne and de Kretser JJ.*LILA UMMA, Appellant *and* MAJEED, Respondent.

347—D. C. Kandy, 1,074.

Agreement—Transfer of Lands in consideration of marriage—Validity of agreement without notarial attestation.

The plaintiff married the defendant and in consideration of that marriage the defendant agreed to transfer two lands to the plaintiff.

Held, that the agreement was valid, although it was not notarially attested.*Thamby Lebbe v. Jamaldeen* (39 N. L. R. 73) followed.**A** PPEAL from a judgment of the District Judge of Kandy.

Cyril E. S. Perera, for plaintiff, appellant.

H. W. Thambiah, for defendant, respondent.

September 18, 1943. HEARNE J.—

The facts relevant to this appeal are, as stated by the trial Judge, as follows:—“The plaintiff married the defendant and in consideration of that marriage the defendant agreed to transfer two lands to the plaintiff.

¹ 39 N. L. R. 457.

There is no question about the agreement for it is contained in the marriage certificate. Some question arose as to whether the transfer was to take place within one year or three years of the marriage but three years have elapsed since the marriage." The plaintiff's claim was dismissed as the agreement was not notarially executed. This decision is in accordance, e.g., with *Levvai v. Pakeer Tamby*¹ and *Perera v. Abeydeera*² and at variance with *Thamby Lebbe v. Jamaldeen*³. My brother de Kretser who is associated with me in this appeal has done my brother Soertsz and me the honour of taking the view that, on the facts of this case, he would prefer to follow *Tamby Lebbe v. Jamaldeen* (*supra*). My own view of the matter is settled. In the circumstances the appeal is allowed with costs and judgment must be entered for plaintiff with costs.

DE KRETSE J.—I agree.

Appeal allowed.
