

1938

*Present : Maartensz and Moseley JJ.*

DE FONSEKA *v.* CHARTERED BANK OF INDIA,  
AUSTRALIA AND CHINA.

357—D. C. Colombo, 6,388.

*Privy Council—Application for conditional leave—Notice to Bank by post—  
Notice to Manager as attorney should be by special application—Appeals  
(Privy Council) Ordinance, 1909, rule 5A.*

Where, in an application for conditional leave to appeal to the Privy Council, it is sought to serve notice by post on a Bank, the notice must be posted to the registered office.

Where it is intended to serve notice on the Manager of the Bank as attorney the applicant should obtain an order under rule 5A of the Rules made under the Appellate Procedure (Privy Council) Order, 1921.

**T**HIS was an application for conditional leave to appeal to the Privy Council.

*J. E. M. Obeyesekere* (with him *C. Seneviratne*); for petitioner.

*N. K. Choksy*, for first defendant, respondent.

*Cur. adv. vult.*

July 27, 1938. MAARTENSZ J.—

The application of the plaintiff-appellant for conditional leave to appeal to His Majesty the King in Council from the judgment of this Court dated June 16, 1938, is opposed by the first defendant-respondent, the Chartered

Bank of India, Australia and China, on the ground that the Bank was not served with notice of the intended application as required by rule 2 of the Rules in Schedule I of the Appeals (Privy Council) Ordinance, 1909.

The appellant relies on two notices. The first was sent by post addressed to the Chartered Bank of India, Australia and China, Colombo. It was produced by Counsel who appeared for the Bank and is marked X.

The second was a notice served by the Fiscal on, according to the return of the process server, the "Manager, Chartered Bank of India".

I do not think the second notice superseded the first, as the first notice intimated that the appellant intended to apply on June 30, 1938, "or so soon thereafter as may be convenient", and is not inconsistent with the second notice which intimated that the application would be made on July 11, 1938, "or on such date thereafter for which the said matter may be adjourned".

The main contention is that the notices were not served on the Bank as the notice sent by post was addressed to the Colombo branch of the Bank and the notice served by the Fiscal was in fact served on a Sub-accountant named Skinner and not on the Manager. It was also submitted that even if it was served on the Manager it was not a good service.

For the appellant it was argued that a notice addressed to the Colombo branch of the Bank was a good notice as the Colombo branch should have transmitted it to its head office. We were not referred to any authority in support of this proposition, and I am unable to accept it. In my judgment where it is sought to serve notice by post on a Bank such as the defendant Bank, it must be posted to the registered office. I accordingly hold that the notice sent by post has not been served on the Bank.

As regards the notice served by the Fiscal, the appellant obtained an order under rule 5 of the Rules made by the Appellate Procedure (Privy Council) Order, 1921, that notice of his intention to apply for conditional leave to appeal to His Majesty the King in Council be issued and served through the Court. But he did not obtain an order under rule 5A that the notice be served on the attorney of the Bank. The notice of the intended application would therefore not have been properly served on the Bank even if it was served on the Manager, and the Manager was an attorney of the Bank or authorized to accept legal processes and notices. See the cases of *Fradd v. Fernando*<sup>1</sup> and *Wijesekere v. Norwich Life Assurance Company*<sup>2</sup>.

It is therefore unnecessary to decide whether the notice was served on the Manager as stated by the process server or on Mr. Skinner as sworn to by him.

In the result the application for conditional leave must be refused with costs on the ground that notice of the intended application was not served on the Bank.

Before leaving the case I should, I think, say that provision should be made in the Rules to facilitate the service of notices required to be served under the Ordinance and the Rules.

MOSELEY J.—I agree.

*Application refused.*

<sup>1</sup> (1934) 36 N. L. R. 132.

<sup>2</sup> (1936) 6 Ceylon Law Weekly 121.