

STASSEN EXPORTS LIMITED
v.
BROOKE BOND (CEYLON) LIMITED AND ANOTHER

SUPREME COURT.
H. A. G. DE SILVA, J., AMERASINGHE, J., KULATUNGA, J.,
S. C. APPEAL No. 21/90,
S. C. SPL. L. A. No. 42/90,
D. C. COLOMBO No. 2845/SPL.
C. A. L. A. NO. 124/89,
JULY 30, 31, AUGUST 30, 31 AND SEPTEMBER 17, 1990.

Intellectual Property Act, No. 52 of 1979 - Sections 107 (10) 107 (13), 182 (3).

Registration of Trade Mark - Appeal - Leave to appeal to Court of Appeal - Meaning of "Rules" in Section 182 (3) of the Intellectual Property Act, No. 52 of 1979 - Civil Procedure Code (Cap. 105) Section 754 - Trade Marks Ordinance No. 14 of 1988, Section 33 - Trade Marks Ordinance No. 15 of 1925 sections 50, 190 (2) - Interpretation of Statutes - Principles applicable - Subordinate legislation.

Stassen Exports Ltd. applied to the Registrar of Trade Marks for the registration of a Trade Mark. Brooke Bond Ceylon Ltd. objected to the registration of the mark. The Registrar held that the mark could be registered. Brooke Bond Ceylon Ltd. appealed to the District Court. The District Court dismissed the appeal of Brooke Bond Ceylon Ltd. who then appealed to the Court of Appeal for leave to proceed against the decision of the District Court. Stassen Exports Ltd. objected that Brooke Bond Ceylon Ltd. was following the wrong procedure in applying for leave to appeal. Brooke Bond Ceylon Ltd., it was submitted, in terms of Section 154 (1) of the Civil Procedure Code, had a *right* to appeal and therefore the Court of Appeal had no jurisdiction to entertain the application for *leave to appeal*. The Court of Appeal overruled that objection.

On appeal to the Supreme Court,

Held (Kulatunga J. dissenting) that an appeal from a final judgment of a District Court is governed by Section 754 (1) of the Civil Procedure Code and therefore a person dissatisfied with such a judgment may prefer an appeal to the Court of Appeal against such judgment for any error in fact or in law as a matter of right. The Court of Appeal has no jurisdiction in such circumstances to hear and determine an application for leave to appeal. When Section 182 (3) of the Code of Intellectual Property Act states that "Every judgment or Order of the District Court under this Code shall be subject to an appeal to the Court of Appeal and such appeal shall be subject to the same rules which govern interlocutory appeals from the District Court", the word "rules" in that section means "rules of Court" and not legislation made by Parliament such as Section 754 (2) of the Civil Procedure Code.

Per Amerasinghe, J.,

"I do not wish to suggest that the technical meaning must *always* be given to words in an Act of Parliament. What I do say is that where an enactment uses a term which has both an ordinary and technical meaning the question of which meaning the term is intended to have is determined by the content. If the content is technical, the presumption is that the technical meaning of the term is the appropriate one unless the content warrants the wider meaning given to the word *loquitur ut vulgus*, that is according to the common understanding and acceptance of the term in common parlance".

Cases referred to :

- (1) *Savings Investment Bank Ltd. v. Gasco Investment (Netherlands) B V and others* 1988 1 All ER 975, 992.
- (2) *Maunsell v Olins* [1975] A. C. 373, 382, 387, 390, 391, 394, fin - 395
- (3) *R v. Slaton* (1881) 8 QBD 267, 272, 274.
- (4) *Holt & Co. v. Collyer* (1881) Ch. D 718, 720
- (5) *The Lord Advocate v. Stewart and Another* [1902] A.C. 344, 356.
- (6) *George Stephenson v. Henry Theophilus Higginson* [1851] 3 HLC 638, 686.
- (7) *Magor and St. Mellons RDC v. Newport Corpn.* [1952] A.C. 189

- (8) *Aron Saloman (Pauper) v. Saloman & Co Ltd.* [1897] A.C. 22, 38
- (9) *Duport Steels Ltd and Others v. Sirs and Others* [1980] 1 All ER 529, 541.
- (10) *Miller v. Salomans* (1852) 7 Ex. 475, 560
- (11) *Chatenay v. Brazilian Submarine Telegraph Co.* [1891] 1QB 79,85
- (12) *Stock v. Frank Jones (Tipton) Ltd.* [1978] 1 All ER 948, 951, 953, 954.
- (13) *Holmes v. Bradfield Rural District Council* [1949] 2 KBD 1, 7, 8.
- (14) *Preston v. Buckley* (1870) LR 5 QB 391, 394.
- (15) *The River Wear Commissioners v. William Adamson and Others* (1877) 2 AC 743, 746, 756, 763, 764, 777, 778, fin - 779.
- (16) *Attorney-General v. Noyes and Others* (1881) 8 QBD 125, 138
- (17) *The Sussex Peerage Case* (1884) XI Clarke & Fennelly 85, 143
- (18) *Hornsey Local Board v. Monarch Investment Building Society* (1889) 24 QBD1, 5, 9
- (19) *Cox v. Hakes* [1890] 15 AC 506, 528.
- (20) *David M'Cowan v. Baine and Johnston and Others* [1891] AC 401, 409
- (21) *Sutters v. Briggs* [1922]AC 1, 8
- (22) *Inland Revenue Commissioners v. Colco Dealings, Same v. Lucbor Dealings Ltd.* [1959] 1 W. L. R. 995, 1002-3
- (23) *Ealing London Borough Council v. Race Relations Board* [1972] AC 342, 360, 361.
- (24) *Otiyath Vazayil Abuvakkar and Others v. Otiyath Kunhikuttyali and Others* AIR 1923 Madras 153, 159.
- (25) *Mirza v. Jhanda Ram* AIR 1930 Lahore 1034, 1040.
- (26) *Corocraft Ltd. v. Pan American Airways Inc.* [1969] 1 QB 6-16, 638
- (27) *Western Bank Ltd. v. Schindler* [1976] 3 WLR 341 pp. 355 fin - 356
- (28) *City of London v. Wood* (1701) 12 Mod. Rep. 609, 687.
- (29) *Capper and Another v. Baldwin* [1965] 1 All ER 787, 791
- (30) *Grey v. Pearson* (1857) 6 HLC 61, 108
- (31) *R v. Halliday* [1917] AC 260, 303.
- (32) *Mitchell v. Torup* (1766) Park 227, 232.
- (33) *R v. Schildkamp* [1971] AC 1, 22, 23.
- (34) *Attorney-General v. Prince Ernest Augustus of Hanover* [1957] AC 436, 461, 473.
- (35) *Bromley LBC v. Greater London Council* [1982] 1 All ER 129, 174,
- (36) *Grant v. Langston* [1900] AC 391.
- (37) *B. Aerodrome Limited v. Dell* 1917 KBD 380, 385.
- (38) *Stowel v. Lord Zouch* Plowden 369.
- (39) *Registrar of Restrictive Trading Agreements v. W. H. Smith and Son & Others* [1968] 1 WLR 1541, 1551, 1552
- (40) *Smith & Others v. Brown & Others* (1881) QBD 729, 733.
- (41) *R. v. George Webb Hall* (1822) 1 B & C 123, 136
- (42) *Graham v. Ewart* 1856 1 H & N 550, 562, 563, 564
- (43) *Rein v. Lane* 1867 LR 2 QB 144, 150, 151
- (44) *The Edinburgh Street Tramways Co v. Torbain* (1877) 3 App. Cases 58, 68.
- (45) *The Dunelm* 1884 9 P. D. 164, 171
- (46) *Lumsden v. IRC* [1914] AC 877, 892, 897.
- (47) *Holmes v. Bradfield Rural Development Council* [1949] 2 KB 1, 7 fin. - 8
- (48) *Nestle Co. Ltd v. IRC* [1953] 1 All ER 877, 878, 879
- (49) *The Lincoln College Case* (1595) 3 Co. Rep. 586
- (50) *John Carter Colquhoun v. Henry Brooks* [1889] 14 AC 493, 506
- (51) *Canada Sugar Refining Co. v. R* [1898] C 735, 741
- (52) *Courtauld v. Legh* (1869) LR 4 Ex. 126, 130
- (53) *R v. Poor Law Commissioners* (1837) 6 A & E 56

- (54) *Re Kirkstall Brewery Co. Ltd. and Reduced* (1877) 5 Ch. D 535
- (55) *The King v. Berchett* (1690) 1 Show 106, 108
- (56) *Murphy v. Duke* [1985] 2 All ER 274, 280
- (57) *R v. East Ardsley Inhabitants* (1850) 14 QB 793, 801
- (58) *Fisher v. Val de Travers Asphalte Co.* (1875) 1 CPD 259
- (59) *Stone v. Mayor, Alderman and Burgesses of Yeovil Corporation* (1876) 1 CPD 691, 701
- (60) *Harcourt v. Fox* (1693) 1 Show 506, 532
- (61) *Mason v. Boltons Library Ltd* 1913 1KB 83, 90
- (62) *Jenkins v. IRC* [1944] 1 All ER 491, 495
- (63) *The Fusilier* (1865) Br & L 341, 393
- (64) *Unwin v. Hanson* [1891] 2 QB 115
- (65) *Herron v. Rathmines & Rathgar Improvement Commissioners* [1892] AC 498, 501
- (66) *Riggs v. Palmer* (1899) 115 NY 506, 22 NE 188
- (67) *Ramachandra Deb v. Bhalu Patnaik* AIR 1950 Orissa 125, 129
- (68) *The Governor and Company of the Bank of England v. Vagliano Brothers* [1891] AC 107, 144, 145
- (69) *Bristol Tramways & Carriage Co Ltd v. Fiat Motors Ltd* [1910] 2 KB 831, 836
- (70) *Yorkshire Insurance Co. Ltd v. Nisbet Shipping Co.* [1962] 2 QB 330, 342 et seq.
- (71) *R v. Titterton* [1895] 2 QB 61, 67
- (72) *Govinda Iyer v. Emperor* AIR 1919 Mad 7, 8
- (73) *R v. Holland Palmer* (1785) 1 Leach 352, 355
- (74) *En Parte Copeland* (1852) 2 De. GM & G 914, 920
- (75) *R v. Loxdale* (1758) 1 Burr 445, 447
- (76) *Barras v. Aberdeen Steam Trawling and Fishing Co Ltd.* [1933] AC 402, 411
- (77) *Powell v. Cleland* [1948] 1 KB 262, 273
- (78) *Beaman v. ARTS Ltd* [1949] 1 KB 550, 567
- (79) *Ealing Corporation v. Ryan and Another* [1965] 2 QB 486, 493
- (80) *Davies Jenkins and Co. Ltd. v. Davies* [1968] AC 1097, 1121
- (81) *Richards v. Mc Bride* (1881) 8 QBD 119
- (82) *Laxman Pandu and Others v. Chief Mechanical Engineer, Western Railway* AIR 1955 Bom. 283, 284
- (83) *National Assistance Board v. Wilkinson* [1952] 2 QB 648, 661
- (84) *Vasudeva Mudaliar v. Srinivasa Pillai* (1907) ILR 30 Mad 427, 433 (P. C.)
- (85) *Ananti v. Chhanu and Others* AIR 1930 All 193, 197
- (86) *George Wimpey & Co. Ltd v. BOAC* [1955] AC 169, 191
- (87) *Ishar Singh v. Allah Rakha and Another* AIR 1936 Lahore 698, 699
- (88) *State v. Jamnabai Manji Keshaviji* AIR 1955 Bom 280, 282
- (89) *Samidorai Thennavarayar v. Vaithilinga Thennavarayar* AIR 1964 Mad. 314
- (90) *Tayillath Vamanan Nambudiri v. Ammamankandyil Narayana Kurup and Others* AIR 1965 Kerala 1, 2 fin.
- (91) *Commissioner of Income Tax Bombay v. M/s. Filmistan Ltd. Bombay* AIR 1958 Bom. 345, 346
- (92) *Nagendra Nath Bose v. Mon Mohan Singha Roy and Others* AIR 1931 Calcutta 100
- (93) *Sheikh Sadar Ali v. Sheik Dolliluddin Ostagar* AIR 1928 Cal 640
- (94) *The Colonial Sugar Refining Company Ltd v. Irving* - [1905] AC 369, 375
- (95) *Badruddin Abdul Rahim v. Sitaram Vinayak Apte* AIR 1928 Bombay 371, 373
- (96) *Escoigne Properties Ltd v. IRC* [1958] AC 549, 566
- (97) *The Beta* (1865) 3 Moo. P. C. C. (N. S.) 23, 25
- (98) *Curtis v. Stovin* (1889) 22 QBD 513, 517
- (99) *Hankey v. Clavering* [1942] 2 KB 326, 330

(100) *Juanis v. Engo Nona* (1926) 8 Ceylon Law Recorder 45

(101) *Fernando v. Fernando* (1969) 72 NLR 599

(102) *Savings and Investment Bank v. Gasco* (1988) 2 All ER 975

APPEAL from an order of the Court of Appeal given on a preliminary objection to an application for leave to appeal.

H. L. de Silva P. C. with *Gomin Dayasiri, P. M. Ratnawatte* and *Janaka de Silva* for petitioner.

K. N. Choksy, P. C. with *Lakshman Kadigamar* for respondent.

Cur adv. vult.

October 09, 1990

AMERASINGHE, J.

Stassen Exports Ltd., applied to the Registrar of Trade Marks under section 102 of the Code of Intellectual Property Act, No. 52 of 1979 for the registration of the trade mark *Spring Brand* that was depicted under the number 40649 in the *Government Gazette* No. 246 of 20 May, 1983. Brooke Bond Ltd., in terms of section 107 (10) of the Intellectual Property Act, filed a notice of opposition dated 17 November, 1983. Brooke Bond Ltd. objected to the registration of the mark *Spring Brand* on the ground that it was the registered owner of Trade Mark Nos. 5226 and 2878 which, wholly in one case, and partly in the other, consisted of the words *Spring Leaf*. After inquiring into the matter, the Registrar of Trade Marks by his Order, dated 25 January, 1988, made in pursuance of the powers vested in him by section 107 (13) of the Intellectual Property Act, held that the mark in question could be registered by Stassen Exports Ltd.

Brooke Bond Ltd. in terms of Section 182 (1) of the Code of Intellectual Property Act appealed to the District Court. After hearing the parties, on 30 November, 1989 the District Court dismissed the appeal of Brooke Bond Ltd.

Brooke Bond Ltd. then applied to the Court of Appeal for leave to appeal against the decision of the District Court. On the appointed day for the hearing of the application for leave to appeal, learned counsel for Stassen Exports Ltd. raised a preliminary objection. He submitted that Brooke Bond Ceylon Ltd., had followed the wrong procedure: The appeal was from a final judgment of the District Court. Therefore Brooke Bond Ceylon Ltd. had, in terms of section 754 (1) of the Civil Procedure Code, a *right* to appeal which it should have exercised. Instead, it had

mistakenly only sought *leave* to appeal to that Court. In the circumstances the Court of Appeal had no jurisdiction to entertain the application for leave to appeal.

The matter of the preliminary objection was argued on 19 February, 1990. On 13 March, 1990 the Court of Appeal decided that Brooke Bond Ceylon Ltd. had followed the correct procedure in seeking the leave of the Court and overruled the objection.

By its petition dated 28 March, 1990, Stassen Exports Ltd., hereinafter referred to as the Appellant, sought the leave of the Supreme Court to appeal from the decision of the Court of Appeal on the question of the preliminary objection.

The matter of the application for leave was considered by this Court on 19 June, 1990. On that occasion, the Senior State Counsel who appeared for the Registrar of Trade Marks, in support of his Motion dated 14 May, 1990, stated that the Registrar, who had taken no part in the proceedings in the Court of Appeal, would abide by the decision of the Supreme Court in this matter. Senior State Counsel indicated that, in the circumstances, he need not further participate in these proceedings. Learned counsel for the Appellant and Brooke Bond Ceylon Ltd., hereinafter referred to as the Respondent, had no objection to this. The Supreme Court granted leave to appeal on 19 June, 1990.

Had the Respondent followed the correct procedure when it applied to the Court of Appeal for leave to appeal or should it have taken those steps that are prescribed for lodging appeals as of right ?

The Respondent maintained that leave to appeal had been properly sought because section 754 (2) of the Civil Procedure Code provides that "Any person who shall be dissatisfied with any order made by any original court in the course of any civil action, proceeding or matter to which he is or seeks to be a party, may prefer an Appeal to the Court of Appeal against such order for the correction of any error in fact or in law, with the leave of the Court Appeal first had and obtained."

It was not in dispute that the decision of the District Court in respect of which the appeal was sought to be preferred was a *final judgment* of that Court on the appeal against the order of the Registrar of Trade

Marks. It was not merely an order pronounced in the course of that action. It was a finally decisive pronouncement of the District Court and not merely an order which was interlocutory in nature. That being so, the Appellant maintained, the Respondent's case came under section 754 (1) of the Civil Procedure Code which deals with the right of appeal where there is a final judgment. Section 754 (1) provides that "Any person who shall be dissatisfied with any judgment pronounced by any original court in any civil action, proceeding or matter to which he is a party may prefer an Appeal to the Court of Appeal against such judgment for any error in fact or in law."

The explanation of the Respondent for requesting leave to appeal in terms of section 754 (2) was that the decisions of a District Court, whether they be final judgments or other orders, made under the Code of Intellectual Property Act No. 52 of 1979, must follow the provisions of the Civil Procedure Code governing interlocutory orders. The reason for this, the Respondent says, is that section 182 (3) of the Code of Intellectual Property Act stipulates that "Every judgment or order of the District Court under this Code shall be subject to an appeal to the Court of Appeal and such appeal shall be subject to the same rules which govern interlocutory appeals from the District Courts."

Mr. Choksy, P.C submitted that although "interlocutory" was not defined, the word had a well - established meaning among lawyers and was understood as relating to orders made by a Court in the course of an action where there was no finality. He recalled the practice, in days gone by, of the Registrar of the Supreme Court listing as a matter of priority "interlocutory", as distinguished from "final" appeals. He referred us to the observations of Nicholls, L.J. in *Savings Investment Bank Ltd. v. Gasco Investment (Netherlands) BV and Others* (1) with regard to the meaning of the term "interlocutory". There was no dispute about the meaning of the word "interlocutory".

The Respondent submitted that, since section 182 (3) of the Code of Intellectual Property states that every appeal, whether it be a judgment or order shall be subject to the *same rules which govern interlocutory appeals*, the rules of procedure for preferring appeals from interlocutory orders set out in section 754 (2) of the Civil Procedure Code, and not the provisions of section 754 (1), which prescribes the mode of appeal from final judgements, become applicable. If section

754 (2) prescribes the mode of preferring an appeal, then leave to appeal must be first had and obtained because that is the procedure prescribed by section 754 (2).

According to the Appellant, section 182 (3) of the Code of Intellectual Property does not say that appeals shall be subject to the *law* governing appeals from interlocutory orders. It had, albeit unnecessarily, by a piece of what learned counsel for the appellant described as "surplusage", confirmed the general law set out in section 754 (1), namely, that a dissatisfied person had a right of appeal. The legislature then added that such appeals which were available as of right and not dependent upon the leave of the Court of Appeal, shall be subject to the *rules* governing interlocutory appeals with regard to *ancillary matters* such as who had to apply for typewritten copies, how much was to be charged for furnishing them, and what was to happen if an appellant did not apply for them or if he failed to pay for such copies and so on.

Why were both final and other orders made subject to the rules governing interlocutory appeals? Mr. De Silva, P.C. explained that this was in order to impose on an appellant a lighter financial burden in the matter of fees for typewritten copies of the record for the brief in appeal than would have been the case had it been regarded as any other final appeal. The charges were to be levied with uniformity in all cases of appeals under the Code of Intellectual Property, whether they were appeals from final judgments or interlocutory orders.

The Appellant and Respondent have placed different meanings on Article 182 (3) of the Code of Intellectual Property. The Court of Appeal agreed with the meaning attributed to that section by the Respondent. The Appellant disagrees with the decision of the Court of Appeal and it is the delicate task of this court to interpret that section and decide whether the word "rules" in Article 182 (3) of the Code of Intellectual Property should, as the Respondent suggests, be given its wider, "ordinary" meaning, or whether, as the Appellant says, it should be given a narrower, "technical" meaning.

The expression "ordinary" in explaining the meaning of words is often used by the Courts interchangeably with other words such as "genuine" "grammatical" "literal" "natural" and "popular." W.F. Craies (Statute law 7th Ed. by S.G.G. Edgar, 1971, at pp. 65 fin- 66) suggests that the word

"primary" might be used instead of such words. Sir Rupert Cross (*Statutory Interpretation* 2nd Ed. By John Bell and Sir George Engle, 1987) too uses the term "primary". Sometimes, as Lord Simon of Glaisdale did in *Maunsell v. Olins* (2) at p.391 reference is made to a "primary ordinary sense" and "secondary ordinary sense". Some of these words may also be used in a pejorative sense. (E.g see Cross, op. cit. 65). "Ordinary" or "Primary" are sometimes used as the opposite of "technical." (E.g. see *The Interpretation of Statutes* by N.S. Bindra, Revised by Tahir Mahmood and Yudhishtira 201) ; but in a given context it may be said that the technical meaning is the ordinary, usual, or primary meaning of the word. For instance, Denman, J. In *Rv. Siator*(3) at p.272 says that "it always requires the strong compulsion of other words in an Act to induce the court to alter the ordinary meaning of a well-known legal term." In *Holt & Co . v. Collyer* (4) Fry, J. said that if a word is of "a technical and scientific character, then it must be construed according to that which is its primary meaning, namely its technical and scientific meaning." The popular use of words in a technical context, Lord Robertson observed in *The Lord Advocate v. Stewart* (5) "does not represent their primary meaning but some half understanding of them" (See also F.A.R. Bennion, *Statutory Interpretation*, 1984, at pp. 804—805). One ought, therefore, to be cautious in the use of these words. In order to make myself as clear as I can, I shall endeavour to avoid using these terms, hoping that where they do appear, the meaning will be clear in their contexts.

Learned President's Counsel for the Respondent repeatedly reminded us that the duty of the Court is to construe the Act according to the intent of Parliament. I am in complete agreement with that proposition. I must give the difficult word the meaning intended by Parliament, whether that be its ordinary or technical meaning. However, there are two matters on which I should say something. The first is this : It has been suggested that the meaning intended by Parliament might be described as the "legal" meaning of the word. (E.g. see Bennion, op. cit. at p. 4 and p. 199). I would prefer not to follow that suggestion for the reason that the phrase "legal meaning" is sometimes used to refer to the meaning given by lawyers as a term of art. (E.g. see *George Stephenson v. Henry Theophilus Higginson* (6) *Holt v. Collyer* (4) ; *The Lord Advocate v. Stewart* (5).

The second matter is this : It would seem that not everyone agrees that our task is to find the intention of Parliament.

Lord Simonds, in *Magor and St. Mellons RDC v. Newport Corpn* (7) expressed the view that "A general proposition that it is the duty of the Court to find out the intention of Parliament..... cannot by any means be supported." And Lord Scarman once observed (418 House of Lords Debates, col. 65 9 March 1981) that "We are to be governed not by parliament's intentions but by parliament's enactments."

Admittedly, the "Intention of the legislature" as Lord Watson in *Saloman v. Saloman & Co. Ltd.* (8) observed, "is a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it." Yet, among other things, the search for legislative intention provides an explanation for our expectation as judges, in discharging our duties as interpreters of the law, to find coherence and consistency within and between enactments. (See Cross, op. cit. p. 26). This, as we shall see later on, is a matter of some importance in this case.

To say that we are looking for "the intention of Parliament" also provides what Cross (op. cit. 28) describes as a "perspective or orientation within which judicial decision making takes place." It serves to draw attention to the relatively subordinate role of the judiciary. Article 4 (c) of the Constitution provides that the "Judicial power of the People shall be exercised by Parliament through the Courts, tribunals and institutions. ...". The phrase "intention of Parliament" reminds us that, in its task of ascertaining the intention of Parliament, the role of the Judiciary is limited. As Lord Diplock said in *Duport Steels Ltd. and Others v. Sirs and Others* (9) "Parliament makes the laws, the judiciary interpret them. the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and giving effect to it. It endangers continued public confidence in the political impartiality of the judiciary, which is essential to the continuance of the rule of law, if judges under the guise of interpretation, provide their own preferred amendments to statutes which experience of their operation has shown to have had consequences that members of the court before whom the matter comes consider to be injurious to the public interest." And so I am in complete agreement with the submission of learned President's Counsel for the Respondent that, in terms of what he described as "the fetters the Courts have placed on themselves in discharging their Constitutional functions", it is not the role of this Court to attempt to legislate under the guise of interpretation.

However, when learned President's Counsel for the Respondent submits that giving the wider meaning to the word will not cause any "injustice" or "prejudice" to the Appellant, whereas, giving the word "rules" the narrower meaning would non-suit the Respondent who has used his Trade Mark for over fifty years, and that we may, therefore, give the word "rules" its wider meaning, I must say at once, that that is an irrelevant consideration in executing my task of interpretation. Pollock, C. B. in *Miller v. Salomans* (10) said: "..... I think, where the meaning of a statute is plain and clear, we have nothing to do with its policy or impolicy, its justice or injustice, its being framed according to our views of right or the contrary. If the meaning of the language used by the legislature be plain and clear, we have nothing to do but to obey it - to administer it as we find it; and I think, to take a different course is to abandon the office of Judge, and to assume the province of legislation." With great respect, I think learned Counsel for the Respondent had for a moment overlooked the distinction between the *meaning* and the *legal effect* of section 182 (3) of the Code of Intellectual Property when he invited us to give the word "rules" the wider meaning to prevent hardship to his client. We ought always to observe the distinction. (E. g. cf. per Lindley, L. J. in *Chatenay v. Brazilian Submarine Telegraph Co.*) (11) .

Admittedly, as we shall see, *in trying to ascertain the meaning intended by Parliament*, a Court, bound by the "fetters" imposed upon itself, (if interpretative criteria should be so described) prefers to believe unless there are indications by Parliament to the contrary, that meanings more beneficial or less burdensome or less harmful to the citizen are intended by Parliament, rather than others which have an opposite effect. This is on the way to ascertaining the meaning of the difficult words. As Lord Simon of Glaisdale said in *Stock v. Frank Jones (Tipton) Ltd.* (12) at p. 953, "if the words are capable of more than one meaning it is a perfectly legitimate intermediate step in construction to choose between potential meanings by various tests (statutory, objective, justice, anomaly etc.) which throw light on what the draftsman meant to say." *But once the meaning has been ascertained* by the application of the relevant canons of construction and the meaning is clear, then the Court is no longer concerned with the qualities or effects of what Parliament has said. Finmore, J. in *Holmes v. Bradfield Rural District Council* (13) at pp. 7 fin - 8, said: "Of course the mere fact that the results of applying a statute may be unjust or even absurd does not entitle a court to refuse to put it into operation. It is, however, common practice that, if there are two

reasonable interpretations, so far as the grammar is concerned, of the words in an Act, the courts adopt that which is just, reasonable and sensible rather than one which is, or appears to them to be none of those things."

The duty of a court is to construe Acts of Parliament according to the intent or will of the legislature and to give the words their meaning, even if that intention appears to the court just or unjust, right or wrong, injudicious, odd, absurd, or inconvenient or whatever may be the ulterior consequences of so interpreting them, and to leave the remedy, if one be resolved upon, to others. Dislike of the effect of a statute is of no consequence. (Cf *Miller v. Salomans* (10) per Pollock, C. B.; *Preston v. Buckley* (14) per Blackburn, J.; *The River Wear Commissioners v. William Adamson and others* (15) per Lord O Hagen at p. 756 and per Lord Blackburn at pp. 763, 764 and per Lord Gordon at p. 777, 778; *Attorney - General v. Noyes and others* (16) per Jessel M. R.; the *Sussex Peerage Case* (17) at p. 143 per Tindall, C. J.; *Hornsey Local Board v. Monarch Investment Building Society* (18) per Lord Esher M. R; *Cox v. Hakes* (19) per Lord Herschell; *David M'Cowen v. Baine and Johnston and Others* (20) per Lord Bramwell; *Aron Saloman (Pauper) v. A. Saloman and Company Limited* (8) per Lord Watson; *Sutters v. Briggs* (21) per Viscount Birkenhead L. C. ; *Inland Revenue Commissioners v. Collco Dealings*; *Same v. Lucbor Dealings Ltd.* (22) per Vaisey, J.; *Ealing London Borough Council v. Race Relations Board* (23) per Lord Simon of Glaisdale. See also Craies, op. cit. 28-29; Sir P. B. Maxwell, *The Interpretation of Statutes*, (12th Ed. pp. 28-29). Indeed, although in our Republic sovereignty is, in terms of Article 3 of the Constitution, in the People, effect must be given to the meaning intended by Parliament which, in terms of Article 4 (a) of the Constitution exercises the power of the People, even though the court (which in terms of Article 4 (c) of the Constitution is an instrument through which the judicial power of the People is exercised by Parliament) may believe that such a meaning was opposed to the consciousness of the people. (Cf. per Devadoss, J. in *Oliyath Vazayil Abuvakkar and Others v. Oliyath Kunhikuttyali and Others* (24). To do otherwise would, as Blackstone, when treating of statute law (Vol. I at p. 91), said, "set the judicial power above that of the legislature which would be subversive of all Government." (See also *The River Wear Commissioners Case*, (15) at p. 776). The function of the Court is to interpret the law, not to make it, *jus dicere et non jus dare* (Cf. per Tek Chand J. (Broadway, J. agreeing) in *Mirza v. Jhanda Ram* (25)

Bindra, op. cit. p. 141; Craies, op. cit. 174.) A court may, at most, remove the dross so as to make the meaning of the legislature clearer. In *Corocraft Ltd. v. Pan American Airways Inc.* (26) Donaldson J. at p. 638 said; "The duty of the courts is to ascertain and give effect to the will of Parliament as expressed in its enactments. They are not legislators but finishers, refiners and polishers of legislation which comes to them in a state requiring varying degrees of further processing." With the greatest respect, I fully endorse the observations of Lord Scarman in *Western Bank Ltd. v. Schindler* (27) which learned President's Counsel for the Respondent quoted to us with regard to the limited choice of Judges in the United Kingdom. Judicial legislation is not an option open to Sri Lankan Judges as well. We are not required, as are, for instance, the Swiss courts, to declare and insert into legislation words which the judge would have put there as legislator.

"All this", as Lord Simon of Glaisdale observed in *Stock v. Frank Jones (Tipton) Ltd.*, (12) at p. 954, "is not to advocate judicial supineness: it is merely respectfully to commend a self-knowledge of judicial limitations both personal and constitutional."

In responding to Mr. De Silva's submission that to give the word "rules" the wider meaning would impose an additional burden on appellants, Mr. Choksy said that the dislike of a statutory provision is of no consequence in interpreting it. I agree. Mr. Choksy, P. C. relied on the decision in *Stock v. Frank Jones (Tipton) Ltd.* (12) and referred us to the judgment of Lord Edmund - Davies in that case. At page 954 Lord Edmund - Davies says this: "dislike of the effect of a statute has never been an accepted reason for departing from its plain language. Holt C. J. said nearly three centuries ago: "An Act of Parliament can do no wrong, though it may do several things that look pretty odd". (*City of London v. Wood* (28) Accordingly, even if one regarded the policy implicit in" (the section) "as open to criticism, the statutory language is clear beyond doubt and must prevail." Hard may be the law, but it must be given effect to. *Hoc quidem perquam durum es sed ita lex scripta est.* This, as Lord Simon of Glaisdale said in *Stock v. Frank Jones (Tipton) Ltd.* (12) at p.954 "is far preferable to judicial contortion of the law to meet apparently hard cases with the result that ordinary citizens and their advisers hardly know where they stand." This applies equally to the appellant who may have to bear an additional burden, if that is what Parliament has said so, as well as to the respondent who, if that is the result of what Parliament has said may be non-suited.

As I have said our role as Judges is limited and the rectification of imperfections belongs elsewhere. Perhaps there would be no difficulty in making the necessary alterations. As Lord Simon of Glaisdale observed in *Stock v. Frank Jones (Tipton) Ltd.* (ibid.) "Parliament is nowadays in continuous session, so that an unlooked-for and unsupported injustice or anomaly can be readily rectified by legislation."

How should I begin to ascertain what Parliament meant in enacting section 182 (3)? Mr. Choksy P.C. for the respondent, citing Maxwell (*The Interpretation of Statutes* 12 Ed. by P. St. Langan, 1969, at p. 28), said that the intention of the legislature must be deduced from the language used. With this I agree. *A verbis legis non est recedendum.* (5 Coke 118). A court ascertains what the legislature has intended primarily by what it has chosen to enact in the language it has used. (See *Halsbury's Laws of England*, 4th Ed. Vol. 44 para. 856.) As Lord Parker C.J. said in *Capper and Another v. Baldwin* (29) "the intention of Parliament must be deduced from the language used."

The principle that a court must ascertain the intention of the legislature from the words it has used rests on the basis that, ordinarily, nothing can so well explain the meaning of the makers of an Act as their own direct words. *Index animi sermo* - language conveys the intention of the mind. (See Co. Rep. 118b) Cross (op.cit p.13) explains this in the following way: "It is the courts duty to give effect to the intention of Parliament but their main source of information on the matter is the wording of the statute; if this is not clear there is obviously a risk that the courts will be unable to do their work properly. On the other hand the draftsman will find it difficult to convey the parliamentary intent to the court unless he knows that they will attach the same meaning to his words as that in which he employs them. Hence the need for a common standard of interpretation and there can hardly be a better standard than the ordinary or in appropriate cases, the technical, meaning of English words."

What has the legislature chosen to say in section 182 (3), whether that be expressly or by reasonable and necessary implication (cf per Lord Watson in *Saloman v. Saloman & Co. Ltd.* (8) at p.38, or as a matter of irresistible inference (cf. *Halsbury*, op.cit. para. 904 note 2)? In answering this, a court could follow the advice of Lord Wenslydale in *Grey v. Pearson* (30) and, as a starting point, give the words the meaning they bear when the disputed provision is construed according to the usual rules and

usages of grammar, syntax and punctuation and the accepted canons of construction in interpreting a piece of prose. (cf. *R. v. Halliday* (31) per Lord Shaw of Dumfermline; *Mitchell v. Torup* (32) per Parker C.B.; Cf Bennion, op.cit. p. 200; Halsbury, (op.cit) paras. 863, 865; Maxwell, op.cit. p.28). Lord Upjohn, however, in *R. v. Schildkamp* (33) expressed the view that it is wrong to begin in this way. Counsel had submitted that the terms of the disputed subsection in that case were perfectly clear as a matter of language. His Lordship said (at p. 22 fin. - p. 23): "Looking at that subsection alone, I agree..... But this, in my opinion is the wrong approach to the construction of an Act of Parliament. The task of the court is to ascertain the intention of Parliament; you cannot look at a section, still less a subsection, in isolation, to ascertain that intention; you must look at all the admissible surrounding circumstances before starting to construe the Act."

In support of this view, Lord Upjohn quoted Lord Simonds who, in *Attorney-General v. Prince Ernest Augustus of Hanover* (34) at p. 461 said —

"For words, and particularly general words, cannot be read in isolation: their colour and content are derived from their context. So it is that I conceive it to be my right and duty to examine every word of a statute in its context, and I use 'context' in its widest sense, which I have already indicated as including not only any other enacting provisions of the same statutes, but its preamble, the existing state of the law, other statutes *in pari materia*, and the mischief which I can, by those and other *legitimate means*, discern the statute was intended to remedy."

I have emphasised the phrase "legitimate means" because I shall have to refer to this aspect of the matter later in my judgment.

Many years earlier, in 1877, Lord Blackburn in *The River Wear Commissioners Case*, (15) at p. 763, had said —

"In all cases the object is to see what is the intention expressed by the words used. But, from the imperfection of language, it is impossible to know what that intention is without inquiring farther, and seeing what the circumstances were with reference to which the words were used and what was the object, appearing from those circumstances which the person using them had in view; for the meaning of words varies according to the circumstances with respect to which they were used."

Lest the phrase "person using them" might cause confusion, it might be explained that Lord Blackburn had said that he was endeavouring to state the "principles on which the Courts of Law act in construing instruments in writing" and that His Lordship had held that "a statute is an instrument in writing".

I am conscious of the fact that the canons of statutory interpretation described as the "literal rule", "mischief rule" and "golden rule" are now sometimes fused in their application. I would, however, rather proceed cautiously, from the beginning without jumping in at the deep end or even in the middle so that how I have proceeded all the way may be very clear. Admittedly, the colour of a word might change in its surroundings. (cf. per Lord Scarman in *Bromley LBC v. Greater London Council* (35)). But it seems to me that we should begin to permit our chameleon-like word to roam about, changing its colour in this context or that, only if there is an ambiguity. If a word has "no common or ordinary meaning so fixed and definite that by the mere use of the word you can determine in what sense the legislature has used it," then one ought to "search otherwise than in the word itself what is the meaning in which the legislature has used it, since the natural and ordinary meaning of an ambiguous word cannot be ascertained without the context." (See per Lord Halsbury in *Grant v. Langston* (36) ; per Viscount Reading C.J. in *B. Aerodrome Limited v. Dell* (37).)

As far back as 1844, in the *Sussex Peerage Case* (17), Lord Chief Justice Tindall said —

"..... the only rule for the construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such cases, best declare the intention of the lawgiver. But if any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting the intention, to call in aid the ground and cause of making the statute and to have recourse to the preamble which according to Chief Justice Dyer (*Stowel v. Lord Zouch* (38)), is " a key to open the minds of the makers of the Act, and the mischiefs which they intend to redress. "

The word “rules” in section 182 (3) of the Code of Intellectual Property, learned President’s Counsel for the respondent suggested, means the totality of principles regulating the procedure or method to be observed in preferring appeals from the orders of a District Court laid down by Parliament and by any other body authorized by it.

On the other hand, learned President’s Counsel for the appellant maintained that, although the word “rules” is capable of bearing such a wide meaning, it also has a narrower, technical meaning : it denotes a body of principles laid down by a body or authority empowered by the legislature to prescribe such principles. In this sense, the word “rules ” signifies a form of *subordinate legislation* as distinguished from the *laws made by Acts of Parliament*. Mr. De Silva, P.C. submitted that it is in this technical sense that the word “rules” is used by Parliament in section 182 (3) of the Code of Intellectual Property.

Is the word “rules” *capable at all* of bearing such a meaning as the one suggested by the appellant ? For the time being I shall seek an answer to that question before I attempt to answer the question whether that is the meaning intended by Parliament in section 182 (3).

It must often happen that what is expressed in one place throws light on the meaning intended elsewhere ; (cf. Bennion, op. cit. 851) and learned President’s Counsel for the appellant, citing the decision of Cross, J. in *Registrar of Restrictive Trading Agreements v. W. H. Smith & Son and Others* (39) invited us to consider the use of the word “rules” in other statutes.

When one looks at statutes *in pari materia*, it is clear that the legislature does use the word “rules” in a narrow sense to describe a form of subordinate legislation. Mr. De Silva, P.C. pointed out that in dealing with the subject of appeals from the decisions of District Courts in section 23 of the Judicature Act, No. 2 of 1978 (which has since been amended by the Judicature Amendment Act, No. 37 of 1979), the legislature granted a right of appeal to persons dissatisfied with the decision “ except where such right is expressly disallowed by *any written law, in accordance with any law, regulation or rule* governing or controlling the manner and procedure for so appealing to the Court of Appeal” The legislature uses the words “*any law, regulation or rule* governing procedure” in the Judicature Act with regard to the question of appeals from (a) Primary

Courts in section 35 (1) ; (b) Magistrates' Courts in section 31 ; and (c) Family Courts in section 27. Considering the company which the word "rule" was given in those sections—*noscitur a sociis* — it is difficult to resist the force of Mr. De Silva's submission that the legislature knows of the difference between laws, regulations and rules and that it uses appropriate words to separately describe them because it intends to make such differences clear.

Mr. De Silva, P.C. said that the legislature must be *assumed* to be aware of its own distinctions. Craies (op. cit. p. 174) observes that "if we find that in previous legislation two different words have been designedly used to express two distinct things, we may assume that in subsequent statutes the legislature has not lost sight of the distinction uniformly observed in the preceding statutes. " I should think that this would especially be the case in the matter before us, since the Judicature Act, the Civil Procedure Code and the Code of Intellectual Property were enacted by the same men at almost the same time and it may well be said that they were born of the same of legislative mind and actuated by the same policy. (Cf. Bindra, op. cit p.318 ; J.G. Sutherland, *Statutes and Statutory Construction* , 3rd Ed. Vol. 2 section 5202 pp. 537 - 8) . It might be said in the words of Cockburn, C.J. in *Smith & Others v. Brown & Others* (40) that "we see no reason to suppose that the legislature in using the term in the enactment we are considering had lost sight of the distinction uniformly observed in the preceding statutes."

Although "rules" is used in section 182 (3) of the Code of Intellectual Property without its companions, "laws" and "regulations", it does not necessarily, therefore, become incapable of bearing the narrower meaning. The word "rules" is a free-standing technical legal term with a precise meaning when it is used by the legislature, and, in my view, it has a meaning in law which exists for all purposes and not just for those of particular enactments. Exceptionally, it may, as we shall see, bear other meanings in certain contexts. But that is another matter. "Rules" for instance, is used in Article 136 of the Constitution (another document enacted by Parliament at about the same time) standing by itself and not in the company of "laws" and "regulations". Yet, when it provides in that Article that the Chief Justice with any three Judges of the Supreme Court nominated by him may make "rules" regulating the practice and procedure of the Court with regard to the hearing of appeals and so on, the legislature is once again using the word "rules" in its narrow, technical

sense. The Interpretation Ordinance (Cap. 2) does not define the word "rules", but in section 17, when it deals with the general provisions with respect to the power given to any authority to make rules, the word "rules" standing by itself, occurs in several places and clearly means subordinate legislation.

In the Code of Intellectual Property itself the distinction between rules in the sense of subordinate legislation and Acts of the legislature is recognized. Section 190 (1) repeals the Trade Marks Ordinance and the Merchandise Marks Ordinance and in section 190 (2) states that "Notwithstanding the repeal of the aforesaid Ordinances (a) every rule or regulation made there under as is in force on the appointed date in so far as such rule or regulation is not inconsistent with the provisions of Part V of this Code shall be deemed to be a regulation made under this Code and may be amended or rescinded by regulations made under this Code." The Code enacts similar provisions, in section 187 (3) with regard to the repealed Copyright Ordinance ; in section 188 (2) with regard to the repealed Designs Ordinance; and in section 189 (2) with regard to the repealed Patents Ordinance.

It seems clear from this examination of various enactments of the legislature, including the Code of Intellectual Property itself, that the word "rules" is capable of bearing the meaning ascribed to it by the appellant. Therefore, I have two semantically balanced meanings which the word "rules" can reasonably bear in section 182 (3) of the Code of Intellectual Property: One, a wide meaning, and the other, a narrow meaning. And so, it would seem that, as Lord Shaw of Dumfermline observed in *R v. Halliday*, (31) at p. 303, the application of the literal rule "does not go far in a case of difficulty." I am not for a moment, therefore, suggesting that the point of commencement in the construction of statutes should be otherwise than its meaning ascertained by the application of the literal rule.

In such a situation the court cannot say *non liquet* - it is not clear- and refuse to proceed further. The court must find the meaning intended by Parliament (Cf. Bennion, *op.cit.* at p.4 and p. 208).

Where a word in a statute is capable of more than one meaning so far as the grammar is concerned, as it is the case in the matter before us, the Court must decide whether they are all admissible, or whether one particular interpretation is to be preferred. (Cf. Cross, *op.cit.* at p. 70).

In the section before me, it cannot be held that both meanings are admissible at the same time, for they lead to inconsistent, mutually exclusive results. One would require the respondent to obtain the leave of the Court before preferring an appeal to that Court. The other does not impose such a condition. One gives the Court of Appeal jurisdiction but the other excludes such jurisdiction. The two meanings cannot co-exist and both meanings cannot have been intended by the legislature.

Construing the words in their strict etymological sense, in the circumstances of cases of this sort, is unproductive and therefore inappropriate. I ought, instead, as an informed legal interpreter, guided by the rules, principles, presumptions and canons which govern statutory interpretation, to give the words their meaning in the context in which they are used. (Cf. *R v. George Webb Hall* (41) per Abbott, C. J. ; *The Sussex Peerage Case* (17) per Lord Tindall, C. J. ; *Graham v. Ewart* (42) at p. 563 per Coleridge, J. ; *Rein v. Lane* (43) per Blackburn, J. ; *The Edinburgh Street Tramways Co. v. Torbain* (44) per Lord Blackburn; ; *The Dunelm* (45) per Brett, M. R. ; *Lumsden v. IRC* (46) per Viscount Haldane, L. C. ; *B Aerodrome Ltd. v. Dell* (37) per Viscount Reading, C. J. ; *Holmes v. Bradfield Rural Development Council* (47) per Finemore, J. ; *Nestle Co. Ltd. v. IRC* (48) per Evershed M. R. ; *A-G v. Prince Ernest Augustus of Hanover* (34) per Viscount Simonds. See also Halsbury, op. cit. para. 871; Craies, (op. cit. 170). (Cf. also Cross, op. cit., chapter 111, esp. at p. 48 and p. 55; Bennion, op. cit. p. 4). As between competing meanings, I should select the meaning to which the factors arising from the relevant interpretative criteria accord the greater weight. (Cf. Bennion, op. cit. p. 202 fin. - p. 203).

Not all the criteria are relevant. For instance, the canons of construction relating to "retrospectivity" and "vested interests" have nothing to do with the matter before us and, therefore, I do not resort to them. Instead, I have selected those that are applicable to the matter before this Court, mindful in so doing that these guides to construction are merely aids and that they have no hierarchy or binding force. They are, as Lord Reid observed in *Maunsell v. Olins* (2) at p. 382, "our servants, not our masters. They are guides to construction, presumptions or pointers. Not infrequently one "rule" points in one direction, another in a different direction. In each case we must look at all relevant circumstances and decide, as a matter of judgment, what weight to attach to any particular rule." (See also per Lord Simon of Glaisdale in *Maunsell's Case* (2) at p. 394 fin. - 395). Yet it is

much more than a question of approach and arbitrary preference for relevant criteria. As Donaldson, J. said in *Corocraft Ltd. v. Pan American Airways Inc.* (26) "The duty of the courts is to ascertain and give effect to the will of Parliament as expressed in its enactments. In the performance of this duty the judges do not act as computers into which are fed the statute and the rules for the construction of statutes and from whom issue forth the mathematically correct answer. The interpretation of statutes is a craft as much as a science and the judges, as craftsmen, select and apply the appropriate rules as the tools of their trade."

We should also bear in mind that "the canons of construction..... constitute a code of communication between the draftsman and the court of construction. Observing the code on his side, the draftsman will use language in such a way that its meaning represents what Parliament means to say; and it is only by observance of the code by the court on its own side that a divergence can be avoided between its interpretation of what the words mean from what Parliament meant to say." (Per Lord Simon of Glaisdale in *Maunsell v. Olins*, (2) at p. 391.)

I should first construe the word within the four corners of the Act in which it is found, for as Coke said in the *Lincoln College Case* (49). "The office of a good expositor of an Act of Parliament is to make construction on all parts together and not of one part only by itself for no one can rightly understand any part without perusing the whole again and again - *nemo enim aliquam partem recte intelligere potest antequam totum iterum atque iterum perlegerit*. It is, he says (1 Inst. 381 b) "the most natural and genuine exposition of a statute to construe one part of a statute by another part of the same statute, for that best expresseth the meaning of the makers, and this exposition is *ex visceribus actus*. Indeed, it is improper to give an opinion as to the meaning of a clause unless the whole law is examined. *In civile est nisi tota lege perspecta una aliqua particula ejus proposita judicare vel respondere*. Other parts of the Act must be construed which throw light on the intention of the legislature so that the court may, as far as possible, make a consistent enactment of the whole statute. (See per Lord Herschell in *John Carter Colquhoun v. Henry Brooks* (50) ; per Lord Davey in *Canada Sugar Refining Co. v. R* (51) ; per Blackburn, J. in *Rein v. Lane* (43) per Lord Somervell of Harrow in *Atty-Gen v. Prince Ernest Augustus of Hanover* (34) at p. 473.

What does the word "rules" mean in the context of the Code of Intellectual Property ? What does this equivocal word mean when it is

situated within the section of which it is a part and in relation to the rest of the Act ?

The word "rule" is to be found in sections 187 (3), 188 (2), 189 (2) and 190 (2) of the Code of Intellectual Property. Those sections provide that, notwithstanding the repeal of the Copyrights Ordinance, the Designs Ordinance, the Patents Ordinance and the Trade Marks Ordinance, "every rule or regulation" made under those Ordinances in force on the appointed day shall be deemed to be a regulation made under the Code.

There can be no doubt that the word "rule" in sections 187, 188, 189 and 190 of the Code of Intellectual Property signifies a variety of subordinate legislation, namely, rules of court.

Maxwell (op.cit.p. 278) says that "It has been justly remarked that, when precision is required, no safer rule can be followed than always to call the same thing by the same name." At all events, as Cleasby, J. said in *Courtauld v. Legh* (52) "it is a sound rule of construction to give the same meaning to the same words occurring in different parts of an act of the use of the same expression in every part of an Act." See also *R. v. Poor Law Commissioners* (53) per Lord Denman, C.J.; Cf. *In Re Kirkstall Brewery Co, Ltd. and Reduced* (54) (different statutes).

While it is reasonable to presume that the same meaning is implied by the use of the same expression in every part of an Act, too much importance cannot be attached to such a presumption, for the same word may, depending on its place in the scheme of the statute and the context in which it is used, bear different meanings. (*Halsbury, Laws of England* 4th Ed. 1983, Vol. 44 para. 873; Maxwell, op. cit.p. 279; Craies, op. cit. pp. 168-9). Indeed, it has been pointed out by Bindra (op. cit. at p. 313) that "cases are not lacking where the same word would carry different meanings even though used in the same section. (E.g. see Lindley, L.J. in *Hornsey Local Board v. Monarch Investment Building Society* (18) at p.9). For the present, therefore, I do not hold that the word "rules" in section 182 (3) bears the same meaning as it does in sections 187, 188, 189 and 190 although they are all to be found in the same Code.

Learned President's Counsel for the Appellant subjected section 182 (3) to comminution and argued that the first part of that section, which provides that "every judgment or order of the District Court under this

code shall be subject to an appeal to the Court of Appeal", merely restated the general law applicable. Therefore, he suggested, this part of the section was "surplusage".

In terms of Article 754 (1) of the Civil Procedure Code and section 23 of the Judicature Act a party dissatisfied by a final judgment of a District Court is generally entitled as of right, without leave, to appeal against such a decision to the Court of Appeal. Yet this does not mean that the words in section 182 (3) repeating the law were superfluous. I am in agreement with learned President's Counsel for the Respondent when he cited Bindra (op.cit) at p. 198 and said that, ordinarily, a Court cannot and ought not to assume that words used by the legislature are superfluous. Since the decision in *The King v. Berchet* (55), it has been generally accepted that courts of law must assume that the legislature did not waste its words or say anything in vain and that Acts of the legislature ought to be construed to avoid surplusage. Courts are loath to regard subsequent legislation as unnecessary, since, as Forbes, J. observed in *Murphy v. Duke* (56) "Parliamentary time is sufficiently precious for Parliament not to pass unnecessary Acts of Parliament." Lord Wilberforce too, albeit in a somewhat different situation, in *Maunsell v. Olins* (2) at p-387 observed that "Legislative time is a precious commodity." (See also Bindra, op.cit., at 196-9, 201; Halsbury (op.cit) para 861). A court may treat words as surplusage only if it appears that by attempting to give meaning to every word we should have to make the Act of Parliament insensible or if it is clear that otherwise the manifest intention of Parliament will be defeated. (See per Coleridge, J. in *R. v. East Ardsley Inhabitants* (57). See also *Fisher v. Val de Travers Asphalt Co.* (58); *Stone v. Mayor, Alderman and Burgesses of Yeovil Corporation* (59) per Brett. J. Cf. Craies op. cit. pp. 106-107).

Learned President's Counsel for the Appellant seemed to have felt the force of the submissions of Mr. Choksy, P.C., for in his reply, he did not refer to the words as being "surplusage". Instead, he submitted that the words may have been included in section 182 (3) out of an abundance of caution. Indeed, as Mr. De Silva, P.C. submitted, section 182 (3) would not be a unique instance where the legislature has restated the general right of appeal. In this connection, he referred us to section 30 (5) of the Estate Duty Act Cap. 350; section 17 of the Trade Union Ordinance Cap. 174; section 5 of the Insolvents Ordinance Cap. 103; section 27 A (6) of the Births and Deaths Registration Act Cap. 129; section 14(1) of the

Land Acquisition Act Cap. 295 and section 22 (1) of the Land Settlement Ordinance Cap. 299. If, as Mr. De Silva, P.C. submits, the words were enacted in section 182 (3) out of an excess of caution, that does no harm. *Abundans cautela non nocet*. But that is another matter. Those words certainly neither defeat the intention of Parliament nor do they make nonsense of the section and, in the words of Lord Holt in *Harcourt v. Fox* (60), it might be said that "we should be very bold men when we are entrusted with the interpretation of Acts of Parliament to reject any words that are sensible in the Act." I therefore hold that the first part of section 182(3) is an essential part of that section. I agree with learned President's Counsel for the Respondent that every word of section 182 (3) is relevant and that no part of it should be treated as "surplusage". Mr. De Silva, P.C. agreed during the course of his reply that this should be the case.

In any event, the comminution of the section and the excision of the first part as being "surplusage" does not assist us in this case in arriving at the meaning of section 182 (3), although the technique of dividing a statutory provision may sometimes be of assistance in understanding its meaning. (E.g. see Bennion, *op.cit.* 168).

Whether one meaning or the other should be selected would partly depend on the semantic level appropriate to the subject matter of the statute. What is the audience addressed? In *Maunsell v. Olins* (2) at p. 390 fin. - 391 Lord Simon of Glaisdale, after observing that the two statutory situations, one dealing with ordinary people in their everyday lives, and the other dealing with technical branches of the law, were two extreme situations, observed that "statutory language, like all other language, is capable of an almost infinite gradation of "register" - *i.e.*, it will be used at the semantic level appropriate to the subject matter and to the audience addressed (the man in the street, lawyers, merchants, etc). It is the duty of a court of construction to tune in to such register and so to interpret the statutory language as to give it the primary meaning which is appropriate in that register (unless it is clear that some other meaning must be given in order to avoid injustice, anomaly, absurdity or contradiction). In other words, statutory language must always be given presumptively the most natural and ordinary meaning which is appropriate in the circumstances "

"What *Maxwell on Interpretation of Statutes*, 12 th Ed. (1969), p. 28 calls 'the first and most elementary rule of construction is that it " is to be

assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and otherwise in their ordinary meaning. This 'golden' canon of construction has been so frequently and authoritatively stated that further citation would be otiose. It is sometimes put that in statutes dealing with ordinary people in their everyday lives, the language is presumed to be used in its primary ordinary sense, unless this stultifies the purpose of the statute, or otherwise produces some injustice, absurdity, anomaly or contradiction, in which case some secondary ordinary sense may be preferred, so as to obviate the injustice, absurdity, anomaly or contradiction, or fulfill the purpose of the statute : while, in statutes dealing with technical matters, words which are capable of both bearing an ordinary meaning and being terms of art in the technical matter of the legislation will presumptively bear their primary meaning as such terms of art (or, if they must necessarily be modified, some secondary meaning as terms of art.)" (Per Lord Simon of Glaisdale in *Maunsell v. Olins* (2) at p. 390 fin. - p. 391. Cf. also per Lord Simon of Glaisdale in *Stock v. Frank Jones (Tipton) Ltd.* (12) at p. 953 fin - 954.)

In *Mason v. Bolton's Library Ltd.* (61) at p. 90 Farwell, C.J. said : " It is a stringent rule of construction that in construing an Act of Parliament or a deed containing technical words, the words must be given their technical meaning. " In *George Stephenson v. Henry Theophilus Higginson* (6) Lord Truro said : " In construing an Act of Parliament, I apprehend every word must be understood according to the legal meaning unless it shall appear from the context that the legislature has used it in a popular or more enlarged sense. " In *Holt & Co. v. Collyer* (4) Fry, J. said : "In my view the principle upon which words are to be construed in instruments is very plain - where there is a popular and common word used in an instrument, the word must be construed prima facie in its popular and common sense. If it is a word of a technical or legal character it must be construed according to its technical or legal meaning. If it is a word which is of a technical and scientific character, then it must be construed according to that which is its primary meaning, namely its technical and scientific meaning." In *The Lord Advocate v. Stewart and Another* (5) Lord Robertson said : " The principle that in statutes words are to be taken in their legal sense has a special cogency when the words in question represent only legal conceptions. The popular use of such words does not represent the primary meaning of the words but some half understanding of them". (See also per Bowen, J. in *R.v. Slator*

(3) at p. 274; Bennion, *op. cit.* section 366 at pp. 804—805 and section 368 at p. 809; Craies, *op. cit.* 165; Bindra, *op. cit.* 203, 205, 322, 323, 325, 327; Earl T. Crawford, *The Construction of Statutes*, 1940, pp. 317, 319—320; Halsbury, *op. cit.* para. 867.

What is the subject matter and the audience addressed in the matter before us? The difficult section is contained in the Code of Intellectual Property. The Code deals with highly technical matters, on which ordinary citizens, I suppose, consult their lawyers, rather than with everyday affairs. Therefore, I am inclined to hold that the word "rules" in section 182 (3) of the Code of Intellectual Property was intended by Parliament to bear its technical meaning. In the circumstances, it would seem to be quite illegitimate to stretch the meaning of the word and to give it an extended meaning in the absence of the strong compulsion of other words in the Code of the Intellectual Property to induce me to alter its meaning. (See per Denman, J. in *R. v. Slaton* (3) at p. 272. There are no words at all in the Code which even remotely suggest that any other meaning is warranted. One might, adopting the words of Lord Greene, M.R. in *Jenkins v. IRC* (62) with slight modifications, say that in this case the distinction between "laws" and "rules" is "the veriest a.b.c. in legal language; and nobody familiar with the language of lawyers could have the slightest doubt what" the word 'rules' "was intended to mean. It seems to me to be quite illegitimate to take a word which has a technical and precise meaning and then argue that it has some extended meaning. If the legislature wished to give the word some unusual and extended meaning of this sort, I ask myself why in the world it did not do so. The Legislature is the master of the draftsmanship of" this Act "and if it intends to use a word which is to have the widest possible scope it is a little short of carelessness or incompetence in drafting to select for the purpose a perfectly familiar word which to everyone has a quite limited scope."

I do not wish to suggest that the technical meaning must *always* be given to words in an Act of Parliament. What I do say is that where an enactment uses a term which has both an ordinary and a technical meaning, the question of which meaning the term is intended to have is determined by the context. If the context is technical, the presumption is that the technical meaning of the term is the appropriate one unless the context warrants the wider meaning given to the word *loquitur ut vulgus*, that is, according to the common understanding and acceptance of the term in common parlance.

Thus in *The Fusilier* (63) Dr. Lushington, in construing the word "belonging" in a statutory phrase "belonging to such ship" held that "nothing is more common than to say of passengers by a ship, that they are persons belonging to the ship."

Unwin v. Hanson (64) provides another example. The words to be construed in that case related to the cutting of trees in the country. At p. 119 Lord Esher, M.R. concluded that in the circumstances "lopping" and "topping" were used in language which everybody conversant with the cutting of trees in the country knows and understands. To hold otherwise, the Master of the Rolls said, would be "mere pedantry". See also Maxwell, op. cit. p. 81.

It may, in the context of a particular statute, be improper to presume in the first place that the meaning intended by the legislature was the technical, legal meaning of the word. Thus in *Graham v. Ewart* (42) at pp. 562-564, Coleridge, J. was satisfied that, in the context of that case, it was the popular and not the technical meaning that was appropriate. His Lordship said : " Now, when it is clear from the context of an instrument in what sense words are used in that instrument, the sound rule of construction is to attribute to them that meaning, even though the words be technical and have technically a different meaning ; for it is only so that you can effectuate the intention, and this rule certainly applies to an act of parliament of this description. I confess it seems to me wiser to ascertain from the context, whether the legislature has in fact used the words in their strictly technical, or in some larger and popular sense, and so to ascertain its real intention, than to presume that it must have used them in the former and so defeat it."

Coleridge, J. explained at p. 563 that the presumption in favour of the popular meaning, as against the technical meaning of a word, was appropriate to an Act of Parliament of the *description* he was construing. The Act was a private Act of Parliament which was concerned with the seigniorial rights of a lord of a manor and it was decided that the provision in question saved to the lord an exclusive right of hunting, shooting, fishing and fowling over a certain allotment. The object of the law was to preserve an existing right unimpaired. In the circumstances the understanding of the rights by those affected, rather than lawyers, was of paramount consideration. In many private Acts of Parliament the law is changed purely for the benefit of the promotor or it is more in the nature of a private conveyance rather than the solemn act of the legislature or

the Act may express in the words of certain parties, rather than in the words of Parliament, their arrangements to which the legislature has given its sanction. (Cf. per Lord Halsbury, L. C. in *Herron v. Rathmines & Rathgar Improvement Commissioners* (65) ; Bennion, op. cit. 85-86; 736).

In the case before us, the word "rules" is contained in a public, general Act of Parliament which is of a technical nature, and, since there are no words in the Code of Intellectual Property that compel me to give the word any other meaning, it would seem that it is the narrower, technical meaning that I should select as the meaning intended by Parliament. It should, it seems, prevail, although it be contrary to common usage and although it may not be the popular sense. (See per Lord Simon of Glaisdale in *Maunsell v. Olins* (2) at p-391; Bindra, op. cit 170; Craies, op. cit 170; Crawford 317, 319-320; Halsbury, op. cit para 871).

It may be observed, *en passant*, that in the matter before us Mr. Justice Wijeyaratne (with whom Wijetunga, J. agreed) in the Court of Appeal at page 5 of the judgment of the Court recognized the distinction between rules and laws when he said: "In short, the Civil Appellate Rules 1938 ceased to operate after the enactment of the Administration of Justice Law, No. 44 of 1973 which laid down express laws in its sections 315-356 for procedure in appeals and even rules were made thereafter by gazette notifications as set out above."

The matter might have ended there but for the fact that, during the course of the argument before this court, I inquired whether the word "rules" was ever used by the legislature in its wider sense. Learned President's Counsel for the Respondent satisfied me that it was indeed sometimes used by the legislature in a wider sense. He referred to section 2 of the Evidence Ordinance, and to sections 4 (proviso), 285 (2) and 777 of the Code of Civil Procedure to demonstrate that the word "rules" is sometimes used by the legislature in an ordinary, wider, sense, to describe laws as distinguished from subsidiary legislation. He further reminded us that lawyers used the word rules in expressions such as "hearsay rule" and "rules of procedure" to describe "laws". Perhaps it is in this wide sense that the word is used in R. Dworkin's paper "Is law a system of rules?" published in *The Philosophy of Law* p. 38 in which he discusses the famous American case on statutory interpretation *Riggs v. Palmer* (66) . Lord Scarman in *Western Bank Ltd. v. Schindler* (27) at

p. 355 fin. also uses the word in its wider sense when he says that we cannot as judges in some other countries, like Switzerland, "insert in to legislation rules which the judge would have put there had he been the legislator." And so, in this case, it would not be possible to say as Bowen, J. did in *R. v Slator* (3). at p. 274 : "There is no such popular use of the term among lawyers, and if there is among persons ignorant of the law, it is an incorrect use of the term." The word "rules" has both a technical meaning and a wider meaning and lawyers use the word in both senses.

At this stage of the proceedings before us, once again, the scales became evenly balanced and the meaning of the word "rules" remained uncertain.

In the hope that I might thereby find a solution, I shall now examine the difficult section in the light of its legislative history, In the application of the informed interpretation rule, the Court has the power, and indeed a duty to consider such aspects of the legislative history, that is the process of enactment and reenactment by which the provision has been arrived at in its present form, as may be necessary to arrive at its legal meaning. (See *The River Wear Commissioners Case* (15) at p. 778 fin. - 779 per Lord Gordon; Bennion, op. cit. 514; Halsbury, op. cit. para. 894).

Mr. De Silva, P. C. also relied on the legislative history of the section.

Learned Counsel for the Respondent, citing Bindra (op. cit.) at pp. 397-398, submitted that every Act of Parliament must be construed by reference to the law subsisting at the time it was enacted. In the passage cited, Bindra, quoting the words of Justice Narsimham in *Ramachandra Deb. v. Bhalu Patnaik* (67) says that it is proper to consider "(1) the state of the law which it proposes or purports to alter; (2) the mischief which existed; and (3) the nature of the remedy provided, and then to look at the statutes *in pari materia* as a means of explaining this statute. These are the proper modes of ascertaining the intention of the legislature."

In considering the legislative history of section 182 (3), I might look at the long title of the Act in which it is found for guidance as to legislative intention (See per Lord Simon of Glaisdale in *Ealing London Borough Council v. Race Relations Board*, (23) at p. 361; Cross, op. cit. pp. 122, 124) even though long titles, as all of us who have played the role of draftsman know, are essentially vestigial and often completely useless as statements of purpose.

The long title to the Code of Intellectual Property Law of 1979 states that it was "An Act to revise, consolidate, amend and embody in the form of a Code the law relating to Copyright, Industrial Designs, Patents, Marks, Trade Names and Unfair Competition and provide for the better registration, control and administration thereof and for matters connected therewith or incidental thereto."

Codification is a rare event in Sri Lanka. When it does take place, the proper course is to examine the language of the Code and to ask what is its meaning, uninfluenced by any consideration derived from the previous state of the law (Cf. per Lord Herschell, L. C. in *The Governor and Company of the Bank of England v. Vagliano Brothers* (68) at p.144 ; per Cozens-Hardy, M. R. in *Bristol Tramways &c. Carriage Co. Ltd. v. Fiat Motors Ltd.* (69). When I examine section 182 (3) of the Code of Intellectual Property in this way, I derive no assistance with regard to the meaning of the section.

Although the previous law should not be looked at in the first place, where there is a doubt, however, as it is in the case before us, it may be considered for the purpose of aiding in the construction of the provisions of a code (See per Lord Herschell in *Bank of England v. Vagliano* (68) at p. 145 ; Cf. *Yorkshire Insurance Co. Ltd. v. Nisbet Shipping Co.* (70) per Diplock, J; *R. v. Titterton* (71) per Lord Russell of Killowen, C. J; Craies, op. cit. 140, 364-5; Maxwell, op. cit. 25-27; Sutherland, op. cit. Vol. II sec. 5203 p. 540).

What was the previous law? Immediately before the passing of the Code of Intellectual Property in 1979, there were several separate pieces of legislation governing certain aspects of the law of Intellectual Property. Trade Marks was governed by the Trade Marks Ordinance, No. 15 of 1925 (Cap. 150 of the Legislative Enactments). The subject of appeals was dealt with in section 50 of that Ordinance in the following terms:

"Every judgment or order by the District Court under this Ordinance shall be subject to an appeal to the Supreme Court, and such appeal shall be subject to the same rules which govern interlocutory appeals from District Courts; and the minimum stamp duties chargeable in the Supreme Court under the provisions of the enactment for the time being in force relating to stamps shall, so far as the same may be applicable, be charged in all proceedings relating to or in connection with such appeal."

This was in exactly the same words as section 33 of the Trade Marks Ordinance, No. 14 of 1888.

Section 190 of the Code of Intellectual Property Act, No. 52 of 1979 repealed the Trade Marks Ordinance of 1925.

In section 182 (3) of the Code of Intellectual Property the Act provides as follows:-

“Every judgment or order of the District Court under this Code shall be subject to an appeal to the court of Appeal and such appeal shall be subject to the same rules which govern interlocutory appeals from District Courts”.

Section 182 (3) of the Code refers to an appeal to the Court of Appeal whereas section 33 of the 1888 Ordinance and section 50 of the Ordinance of 1925 refer to an appeal to the Supreme Court. This was because there was no Court of Appeal at the time: Appeals were then made from the District Court to the Supreme Court until the Court of Appeal was established by the present Constitution in 1978. Section 33 of the 1888 Ordinance and section 50 of the Ordinance of 1925 were also amended with regard to the provisions regarding stamp duties. The Code of Intellectual Property deals with the subject of stamp duties in section 184.

What were the prevailing laws relating to appeals from the orders and judgments of District Courts in general and the mode of preferring such appeals?

From the time of the passing of the Trade Marks Ordinance of 1888 until the passing of the Administration of Justice Law, No. 44 of 1973, every person dissatisfied with an order or judgment of a District Court could appeal as of right. That was a right given by section 73 of the Courts and their Powers Ordinance, No. 1 of 1889. There were no separate modes of preferring appeals depending, on the one hand, whether the decision of the District Court was a final judgment or, on the other, interlocutory in character. When section 33 of the Trade Marks Ordinance of 1888 or section 50 of the Trade Marks Ordinance of 1925 had to be construed, the words “Every judgment or order of the District Court..... shall be subject to the same rules which govern interlocutory appeals

from District Courts” were understood to mean that final judgments and orders were both subject to the same subordinate legislation, namely the Rules of Court, regulating appeals governing orders that were not final in nature, that is, interlocutory orders.

A distinction between the mode of preferring appeals from final judgments and other orders was made with regard to appeals from District Courts for the first time by the Administration of Justice Law of 1973. However, Section 317 of the Administration of Justice Law read with section 356 of that law made it clear that leave to appeal was only required in respect of “orders” and not in respect of “judgments”. Therefore, even under the provisions of the Administration of Justice Law, from 1973-1977, leave to appeal was not required in any Trade Mark case where, as in the matter before us, the appeal was from a final judgment.

Section 23 of the Judicature Act, No 2 of 1978 provided that “Any party dissatisfied with any judgment, decree or order pronounced by a District Court may, except where such right is expressly disallowed by any written law, in accordance with any law, regulation or rule governing or controlling the manner and procedure for so appealing, appeal to the Court of Appeal against any such judgment, decree or order from an error in law or in fact committed by such court.....”

The Judicature (Amendment) Act, No. 37 of 1979 replaced section 23 of Act No. 2 of 1978 with a new section containing the following words:-

“Any party who shall be dissatisfied with any judgment, decree, or order pronounced by a District Court may (excepting where such right is expressly disallowed) appeal to the Court of Appeal against any such judgment, decree, or order from any error in law or in fact committed by such court.....”

These words were similar to those used in section 73 of the Courts and their Powers Ordinance of 1889.

The old Civil Procedure Code, No. 2 of 1889 which was repealed by the Administration of Justice (Amendment) Law, No. 25 of 1975 with effect from 1 January, 1976, did not require leave of the appellate Court to be first had and obtained as a condition precedent to an appeal to that court. The old Civil Procedure Code was revived by section 2 of the Civil

Courts Procedure (Special Provisions) Law, No. 19 of 1977. However, Section 109 of Law 20 of 1977 amended section 754 of the old Civil Procedure Code. In section 754 (1) it permits an appeal as of right from decisions of an original court from final judgments. With regard to orders, as distinguished from final judgments, however, section 754 (2) provides that an appeal may be preferred only with the leave of the Court of Appeal first had and obtained.

Up to the time of the passing of the Code of Intellectual Property in 1979, there is no doubt that in preferring an appeal from the final judgment of a District Court in a matter relating to Trade Marks, no leave to appeal was necessary.

As we have seen, certain modifications had been made to section 50 of the Trade Marks Ordinance of 1925. However, these changes do not affect the mutual status of those sections. Section 50 of the Trade Marks Ordinance of 1925 and section 182 (3) of the Code of Intellectual Property of 1979 are *in pari materia* since they deal with the same subject matter on the same lines. The relevant words in section 50 of the Trade Marks Ordinance have been reenacted *ipsissimis verbis* in section 182 (3) of the Code of Intellectual Property of 1979. The coincidence of language between section 50 of the Ordinance of 1925 and section 182 (3) of the Code of Intellectual property conveys to my mind a strong impression that Parliament did not intend to change the law. In the circumstances, then, and, in the absence of contrary indications, I must presume this to be the case. In this connection one might recall that Wallis, C.J. (Ayling, Kumaraswami and Sastri, JJ. agreeing) in *Govinda Iyer v. Emperor* (72) drew attention to the presumption against the alteration of the scope of sections of a repealed statute that are enacted again: The Chief Justice said: "I may add that, where sections are repealed and reenacted in slightly different form, there is a presumption against implied, as contrasted with express alterations in the scope of the section."

It appears from its long title that the Code of Intellectual property was both a consolidation and codification. Where from the long title a law is stated to be a codification or consolidation of previous enactments, with or without amendments, unless the contrary intention appears, the codifying or consolidating Act must be presumed not to be intended to change the law. (See Bennion, *op. cit.* at pp. 517 and 519).

Craies says (op.cit. 136) that "in construing consolidation Acts prior statutes repealed but reproduced in substance are regarded as *in pari materia*. As such they must be taken together as forming one system and as interpreting and enforcing each other. (See *R. v. Holland Palmer* (73) per Gould, J.; Bennion, op.cit p. 517; Craies, op.cit 134. Those provisions of the earlier laws which are incorporated into a code are construed as a Continuation of the law as it existed. (J.G. Sutherland, *Statutes and Statutory Construction*, 1943, Vol. 1 sec. 2019 p.482). It must be assumed, as a matter of coherence and consistency, that uniformity of language and meaning was intended, (Bennion, op.cit.p. 516. But Cf. per Lord Simon of Glaisdale in *Maunsell v. Olins* (2) at p. 394), and novel meanings must be rejected. In *Hornsey Local Board v. Monarch Investment Building Society* (18), Lindley, L.J. at p. 9 said: "If one construction produces consequences which follow from the constructions put upon other enactments of the same sort, while the rival construction introduces a startling novelty, no lawyer would adopt the latter construction." The wider meaning certainly introduces a startling novelty and must, therefore, be rejected.

The fact that the Trade Marks Ordinance has been repealed is of no consequence in this connection. In *Ex parte Copeland* (74) Knight Bruce, L.J., on a question of construction arising upon a subsequent statute on the same branch of the law said "it is perfectly legitimate to use the former Act though repealed." For this I have the authority of Lord Mansfield, who in *R. v. Loxdale* (75) thus lays down the rule, "Where there are different statutes *in pari materia*, though made at different times, or even expired and not referring to each other, they shall be taken and construed together as one system and explanatory of each other." Cf. *Barras v. Aberdeen Steam Trawling and Fishing Co. Ltd.* (76) per Viscount Buckmaster; *Powell v. Cleland* (77) per Evershed, C.J; *Beaman v. ARTS Ltd.* (78); *Ealing Corpn. v. Ryan and Another* (79) per Ashworth, J. See also *Maunsell v. Olins* (2) per Lord Reid at p. 382 and per Lord Wilberforce at p. 387. See also Craies, op.cit. 134; Bennion, op.cit. 517; Halsbury, op.cit para 885).

Mr. Choksy, P.C. surmised that, section 182 (3) repeated the same words used by the legislature in 1888 and in 1925, "possibly because the draftsman believed that the words in the old Trade Marks Ordinance, fitted in with the new leave to appeal concept". I am unable to agree. In the words of Lord Morris of Borth-Y- Gest in *Davies Jenkins and Co. Ltd. v. Davies* (80) "It is well accepted that the beliefs and assumptions of those who frame Acts of Parliament are to be taken into account when the law."

Mr. De Silva's explanation for the repetition of the words in section 182 (3) was that a mistake had been committed. I should like to respond to this submission in the words of Grove, J. in *Richards v. McBride* (81) : "We cannot assume a mistake in an Act of Parliament. If we did so, we should render many Acts of Parliament uncertain by putting different constructions on them according to our individual conjectures. The draftsman of the Act may have made a mistake. If so the remedy is for the legislature to amend it." This matter needs no further consideration : Mr. De Silva, P.C. said in his reply that, since he accepted my suggestion that the existence of a valid set of rules, in the sense of subordinate legislation was not a condition precedent to making section 182(3) intelligible, it was no longer necessary to depend on the argument based on mistake. Albeit without the earnestness shown in his earlier address to us, he did say, *sotto voce*, in his reply to the submissions of Mr. Choksy, P.C. that he suspected the Draftsman to have made a mistake.

Mr. Choksy, P.C. explained that the same words used in the Trade Marks Ordinances of 1888 and 1925 were repeated in the Code of Intellectual Property because flexibility had to be maintained to make the prevailing laws governing procedure, enacted from time to time, automatically applicable without the amendment of section 182(3). I find it difficult to accept this, for it involves a recognition of the position that an important right, namely the right of appeal, will be left to be altered from time to time casually, by implication. If Parliament intended that changes of this nature should automatically follow other provisions, I should, in accordance with the canons of construction which I shall refer to, assume, in the absence of express provisions to the contrary, that it would have, in the clearest terms, made such appeals subject to the provisions of law for the time being in force. Where the legislature intends to make the provisions of the Civil Procedure Code for the time being in force applicable, it does so, not by some oblique reference, but rather in the clearest possible terms. For instance, in section 17 of the Trade Unions Ordinance (Cap. 174) it stated that "An appeal shall lie to the Court of Appeal against an order made by a District Court under section 16 and the provisions of the Civil Procedure Code shall apply accordingly in all matters relating to or connected with such appeal." In the Land Acquisition Act (Cap. 295), after restating in section 14 (1) the right to appeal to the Court of Appeal from the orders of a District Court or Primary Court, the legislature states in section 14(2) that "Every appeal under sub-section (1) shall be presented within the time and in the manner provided by the

Civil Procedure Code for appeals against decrees in civil suits." The Estate Duty Act, No. 13 of 1980 provides another example. In section 30 (5) of the Estate Duty Act is said that "Any party aggrieved by any decree or order of the District court made on an appeal as herein before provided may appeal against such decree or order in accordance with the provisions of law for the time being in force relating to appeals from judgments and orders of the District Court."

In any event it cannot be assumed that important changes in the law, such as those taking away or qualifying rights of appeal will be made by merely procedural provisions. In *Laxman Pandu and others v. Chief Mechanical Engineer, Western Railway* (82) the Court said: "Now, a right of appeal is both an important right and in certain circumstances it may impose a disability and I do not think that pure procedural provisions should be read or construed as either conferring that right or imposing that disability."

Mr. Choksy, P.C. argued that section 23 of the Judicature Act does not give an immutable right of Appeal. I am in agreement with him. With respect to legislation, Parliament is omnipotent so long as it acts within the framework of the Constitution. It has given a right of appeal and it can take that right away or curtail it. However, the legislature in section 23 of the Judicature Act, before and after amendment, provides that the general right of appeal exists except where such right is "expressly disallowed". The legislature did not want it to be taken away by implication.

If there was any doubt as to whether that right could be taken away by subordinate legislation, that uncertainty was removed by the Judicature (Amendment) Act, No. 37 of 1979 which replaced the words "except where such right is expressly disallowed by any written law, in accordance with any law, regulation or rule governing or controlling the manner and procedure for so appealing" with the words "excepting where such right is expressly disallowed".

Neither section 182(3) nor any other provision of the Code of Intellectual Property expressly takes away the general right of appeal given by section 23 of the Judicature Act.

The Respondent's case is that the word "rules" in section 182 (3) of the Code of Intellectual Property should be given the wider of the two

meanings it is capable of bearing: According to the Respondent "rules" means the entire body of the law. Therefore when section 182 (3) of the Code of Intellectual Property states that appeals from every judgment or order of a District Court are subject to the same rules which govern interlocutory appeals, it means that even final appeals from the District Court in Trade Mark matters are governed by the law as set out in section 754 (2) of the Civil Procedure Code which, in prescribing the mode of appeal in cases of interlocutory appeals, requires that the leave of the Court of Appeal be first had and obtained. According to this view, section 182 (3) of the Code of Intellectual Property departed from the general principle that where a decision of a District Court is final, leave to appeal is a matter of right and is not contingent upon leave to appeal having been obtained.

No doubt, in certain instances, the legislature has departed from the general principle that every aggrieved litigant has an appeal as of right from a final judgment and required such a person to first obtain leave. However, when that has been its intention, as learned President's Counsel for the Appellant pointed out, the legislature was wont to do so in clear and unmistakable words. At about the time the Code of Intellectual Property was enacted, the preferred formula, Mr. De Silva, P.C. said, was "with the leave of the Court of Appeal first had and obtained." (E.g. see section 13 (3) (b) of the Judicature Act, No. 2 of 1978 with regard to appeals from orders made in the exercise of Admiralty Jurisdiction; section 15 (a) (ii) of the Judicature Act with regard to appeals by the Attorney-General from an order of acquittal by a High Court on a question of fact alone or on a question of mixed law and fact; section 16 (1) of the Judicature Act with regard to appeals from the judgment, order or sentence of a High Court by an aggrieved party). Indeed this seems to have been a formula which had been used even earlier. (E.g. see section 62 (1) of the Marriage and Divorce (Muslim) Act, No. 13 of 1951 (Cap 134) with regard to appeals from orders of the Board of Quazis made under section 60 of that Act).

The legislature expresses itself deliberately and positively in this way and not, as is alleged by the Respondent, by an ambiguous and oblique provision, as in the case before us, when it wishes to curtail the right of appeal. It does so because it must know that curtailing the right of appeal, given by section 23 of the Judicature Act read with section 754 (1) of the Civil Procedure Code, brings about a substantial change in the law and

that such changes cannot successfully be brought about unless the legislature expresses its intention with irresistible clearness. The legislature knows that we, the interpreters of the law, observing on our side the canons of the Code I have referred to earlier, will not presume that it makes substantial changes in the law casually, or, as Chief Justice Cockburn said in *Smith and Others v. Brown and Others* (40) "as it were by a side-wind". (See Bennion, op.cit. at p. 317; Craies 122). As Lord Devlin said in *National Assistance Board v. Wilkinson* (83) "It is a well-established principle of construction that a statute is not to be taken as effecting a fundamental alteration in the general law unless it uses words that point unmistakably to that conclusion". If a change in the law is not expressly and clearly indicated, then there is a presumption that the legislature did not intend to overthrow fundamental principles, infringe rights or depart from the general scheme of the law (Bindra, op.cit.p. 210 fin. - 211). Therefore where, as in the case before me, a Court has to choose between two possible meanings, it must select the one that "escapes the necessity of attributing to the legislature a great and sudden change of policy." (*Vasudeva Mudaliar v. Srinivasa Pillai*, (84), at p. 433 (P.C.)). The court must prefer the meaning that leaves the law unchanged unless the legislature has clearly said so. In *Ananti v. Chhanu and Others* (85) the Court said "We do not think that the legislature could have intended to alter the law ... by the use of language that is capable of two interpretations." If the arguments on a question of interpretation are fairly evenly balanced, the interpretation should be chosen which involves the least alteration to the existing law. (Cf. *George Wimpey & Co. Ltd. v. B.O.A.C.* (86) per Lord Reid at p. 191; Maxwell, op.cit.pp. 116 - 122). I, therefore, as a matter of legal policy, choose the narrower meaning of the word "rules" as the meaning of that word intended by Parliament.

Parliament used exactly the same words relevant to this case in the both the old Trade Marks Ordinances of 1888 and 1925 and in the Code of Intellectual Property of 1979. The argument of learned President's Counsel amounts to this: In 1979 Parliament *used the same words* as it did in the old Trade Marks Ordinances of 1888 and 1925 *but changed the meaning* by making it necessary for leave to appeal to be obtained. If it were the intention of parliament to restrict the right of appeal, nothing would have been easier than using apt language, as it has done in other cases, to that end. The usual formula I have referred to earlier would have provided a safe anchor in clear Parliamentary intention. (Cf. per Evershed, C.J. in *Powell v. Cleland* (77). I find it impossible to believe that

Parliament would have left the change in the law in such an important matter as a citizen's right of appeal to be discovered by implication. The explanation of learned President's Counsel for the Respondent that the failure to use the usual formula or words to that effect was due to "a problem of draftsmanship", is, in my view, inadequate and, therefore, unacceptable. In *Ishar Singh v. Allah Rakha and another* (87) Jai Lal, J. said: "The primary rule of the interpretation of statutes is that the intention of the legislature is to be gathered from the language used in the statute. The words used in the present case are unambiguous and it is not open to me to enter into speculation as to what the real intention of the legislature was. It may be as was contended before me, that the section has been badly drafted and that it does not express the real intention of the legislature or that the law laid down in the section is unjust, but these are matters with which I am not concerned."

In *Stock v. Frank Jones (Tipton) Ltd.* (12) which Mr. Choksy, P. C. cited in another connection, Viscount Dilhorne at p. 951 said: "If it were the case that it appeared that an Act might have been better draftedit is not open to the court to remedy the defect. That must be left to the legislature."

I respectfully agree with those observations of Justice Jai Lal and Viscount Dilhorne.

In any event, since the narrower meaning of the word "rules" in section 182 (3) of the Code of Intellectual Property is more beneficent and less onerous to a citizen than the other meaning, for the narrower meaning relieves him of the need to first obtain the leave of the Court before appealing, I am obliged to lean towards that construction. (Cf. *State v. Jamnabai Manji Keshavji* (88); Bindra, op cit. 255).

Moreover, I ought not to overlook the presumption against the imposition of a statutory detriment to legal rights. When I asked Mr. Choksy, P. C., about this, he responded by quoting Maxwell (op. cit) p. 36 as saying that "A construction which would leave without any effect any part of the language of a statute will normally be rejected. Thus, where an Act plainly gave an appeal from one quarter sessions to another, it was observed that such a provision, though extraordinary and perhaps an oversight, could not be eliminated."

Maxwell at p. 36 was dealing with the principle that every word in a statute must be given a meaning. I had earlier intimated to learned Counsel, that I accepted the correctness of the proposition that every effort should be made to make a disputed provision meaningful and operational. For reasons of arrangement I shall refer to this matter later. However, the principle that statutes giving a right of appeal are liberally construed in furtherance of justice, and that an interpretation that will work a forfeiture of that right is not favoured, is a totally different matter. That is a matter dealt with by Maxwell (op. cit.) later in chapter 7 p. 153 *et seq.* The principle is very clear: If two constructions are possible and one takes away a right of appeal, the court should adopt the construction that saves the right. This was the submission of learned President's Counsel for the Respondent; and being an argument from authority, albeit persuasive only and not binding, I accept the principle he suggests as one that should guide this Court. *Argumentum ab auctoritate est fortissemum in lege* (Coke Litt. 254). I have consulted the following decisions in this connection: (*Samidorai Thennavarayar v. Vaithilinga Thennavarayar* (89) per Jagadisan J; *Tayillath Vamanan Nambudiri v. Ammarmankandyil Narayana Kurup and Others* (90) per Mehon, C. J; *Commissioner of Income Tax Bombay v. M/s Filmistan Ltd. Bombay* (91) Per Tendolkar, J. I have also consulted Bindra, op. cit. 552, 557; Craies, op. cit. 122, 123; Crawford, op. cit. Vol 111 section 6807 p. 334; Halsbury, op. cit. para. 907 and 946; Maxwell, op. cit., 153-156).

Admittedly, in this case, the wider construction does not operate to take away the appeal as of right and to shut parties out from the seat of justice. However, there is in principle no distinction between *abolishing* a right of appeal and *restricting* that right. In both cases, a court is obliged to adopt a construction that is more favourable to the litigant. In *Nagendra Nath Bose v. Mon Mohan Singha Roy and Others* (92) the law had been amended so that an appeal would lie only if the condition imposed by the amendment, namely, that a certain deposit of money be first made, had been complied with. Graham, J. at pp. 100-101 said:

"If there were no authority on this point I am bound to say that there seems to be a good deal to be said for the view that the provision in question relates rather to a matter of procedure than detracts from any substantive right. It cannot be said that the right of appeal is taken away, or even prejudiced in any way. It remains intact subject only to the provision which is in the nature of a formality, that an appeal will

only be admitted if the condition laid down in sub - s. (5) is complied with. There is, however, authority in a recent decision of this Court for the contrary view: *Sheikh Sadar Ali v. Sheik Dolliluddin Ostagar* (93). In that case the decision of the Privy Council in the *Colonial Sugar Company's Case* (94) was referred to as conclusive authority for the view that rights of appeal are not matters of procedure, and that the right to enter the Superior Court of Appeal is deemed to arise to a litigant before any decision has been given by the inferior Court. If that be so it would seem to follow that the substantive right of appeal which the litigant possesses must be deemed to be prejudicially affected by a new provision which has the effect of attaching to it any clog or disability."

In the same case Mitter, J. at p. 102 said:

"It is argued however for the opposite party that the right of appeal is not taken away but only conditions are imposed on the exercise of the right. We can see no difference in principle between abolishing a right of appeal and putting a restriction on the right of appeal which had previously been unrestricted. Before the amendment an appeal had merely to be filed in proper form in order to be admitted but now unless the entire sum recoverable in execution is deposited the appeal will not be admitted. This imposes a new burden on the judgment debtor seeking to set aside the sale."

However, in *Badruddin Abdul Rahim v. Sitaram Vinayak Apte* (95) Fawcett, J. at p. 373 seems to draw a distinction between cases in which there is an abolition of a right of appeal and those in which the right is merely restricted. He was prepared to concede that the presumption against retrospectivity would apply where there was an abolition, but not where the right is restricted "in a reasonable manner." In the case before him, a clause in the Letters Patent governing the procedure of the High Court of Bombay had been amended so that no appeal to what he called a *Division Bench* would lie in the exercise of a second appellate jurisdiction within the same court on a question of law unless a single Judge declared that it was fit to be so heard. This alteration, Fawcett, J. said was a mere change in procedure which was *prima facie* retrospective. Mirza, J. at pp. 374-375 agreed that the change was merely procedural, being "intended to regulate the procedure of the High Court regarding the constitution of its appellate Benches and does not primarily contemplate the creation of

a substantive right in favour of the disappointed party to the appeal before a Bench of one Judge.”

In distinguishing the decision of the Privy Council in *The Colonial Sugar Refining Co. Ltd. v. Irving* (94) Mirza, J. at p. 375 stated as follows:

“The matter there did not relate merely to a procedural law. A right of appeal from one tribunal to another tribunal which is differently constituted stands on a different footing from the right to appeal from the judgment of a tribunal where only one judge constitutes the tribunal, to the same tribunal, where two or more judges constitute the same tribunal. The former creates not merely a remedial but a substantive right; the latter seems merely to regulate the procedure of the same tribunal. A substantive right to appeal to a higher tribunal had already been conferred by the Order in Council of 1860 on the aggrieved party and the Act of 1903 could not, in the absence of a provision to that effect, take away that right and substitute for it another.”

In the matter before us, the question does not concern the mere regulation of procedure of appeals within the same tribunal, but rather, what Mirza, J. described as “a right of appeal from one tribunal to another which is differently constituted.” And that sort of situation, Mirza, J. said affected “substantive” “rights. The amendment in *Badurddin's Case* enabled the Judge in appropriate circumstances, (as for instance, where the Judge, as Mirza, J. explained at p. 375, “feels some hesitation or doubt about his own decision or is of opinion that the point is of such importance that more than one Judge should express an opinion on it”), to permit a matter to be heard by two or more Judges. Moreover, the clause for interpretation in *Badruddin's Case* was in *Letters Patent* and not in *legislation* and Fawcett, J. at p. 372 expressed the view that “If this question arose out of an Act either of the All India Legislature or of a local legislature, or even an Act of Paliament, then in the absence of clear words in the enactment, there would be a good deal to support Mr. Patwardhan's argument.” Patwardhan's argument was that his client's right of appeal was not merely a matter of procedure but a substantive right and that therefore the amendment of the Letters Patent did not operate retrospectively to take away the right of appeal.

As the narrower meaning leaves a litigant's right of appeal unimpaired, in the absence of contrary indications in the Code of Intellectual Property,

I hold that the word "rules" in section 182 (3) was intended by Parliament to mean "rules of court."

What was the mischief sought to be remedied by this alleged change of the law governing appeals? Learned President's Counsel for the Respondent explained that, in general, in an effort to reduce the Laws Delays, and to reduce "the consumption of time and money", Parliament has shown a trend since 1974, which, he says is "increasing", towards limiting the number of appeals by giving the Court the right to control, through the leave to appeal procedure, the matters it is prepared to entertain. Specifically in relation to such matters as Trade Marks, for the sake of "commercial stability" and in the interests of the economy, rights of appeal had to be controlled to expedite decisions. Mr. Choksy, P.C. says that, although section 182 (3) may not have been "feliculously drafted", this was the design.

Mr. De Silva, P. C. inquired whether labour disputes, in the interests of industrial peace, and family law cases, in the interests of domestic stability, were less favoured by the State than matters regarding cases relating to intellectual property. He submitted that, in any event, the Parliamentary history of legislation is not a permissible aid in construing a statute. I am in agreement with him. It is not what Lord Simonds in *Attorney - General v. Prince Ernest Augustus of Hanover*(34) at p. 481 described as a "legitimate means" for discerning the mischief sought to be remedied. In *Escoigne Properties Ltd. v. I.R.C.* (96) Lord Denning said : " in this country we do not refer to the legislative history of an enactment as they do in the United States of America. We do not look at the explanatory memoranda which preface the Bills before Parliament. We do not have recourse to the pages of Hansard. All that the courts can do is to take judicial notice of the Previous state of the law and of the other matters known to well - informed people."

All the relevant approaches to the construction of section 182 (3) of the Code of Intellectual Property tend (some more, others less strongly, perhaps, but in cumulation decisively) to the conclusion that the word "rules" in that section must be given its narrower technical meaning, namely, "rules of court".

Finally, I should like to refer to the judgment of the Court of Appeal in the matter before this court. After stating the facts of the case and the

arguments of learned Counsel for the appellant, Wijeyaratne, J. (with whom Wijetunga, J. agreed) deals with the question of the historical changes in appellate procedures brought about by the Administration of Justice, Law, No. 44 of 1973, the Civil Procedure (Special Provisions) Law, No. 19 of 1977 and Civil Procedure Code (Amendment) Law, No. 20 of 1977. Wijeyaratne, J. also describes the various rules framed under those laws and the rules framed under Article 136 of the Constitution of 1978. His Lordship expresses the view that the Civil Appellate Rules of 1938 ceased to be effective after the enactment of the Administration of Justice Law, No. 44 of 1973, that the Civil Procedure Code (Amendment) Law, No. 20 of 1977 made provisions with regard to interlocutory appeals, and that a new Constitution was enacted in 1978 under which certain rules were framed.

The Court of Appeal referred to the rules framed under various provisions of law.

The rules referred to by Wijeyaratne, J. were the Civil Appellate Rules of 1938 and the rules framed under the Constitution of 1978. He describes what these rules were. With great respect, the rules His Lordship refers to have nothing at all to do with the right to appeal from the decisions of a District Judge in Trade Mark matters. After considering the provisions of the Administration of Justice Law, Wijeyaratne, J. concludes that the Civil Appellate Rules 1938 ceased to operate after the enactment of the Administration of Justice Law, No. 44 of 1973.

The Respondent submits that the Court of Appeal was right in its finding that the Civil Appellate Rules of 1938 are no longer applicable. Mr. Choksy, P.C. argued that if the Civil Appellate Rules of 1938 did not exist, and if the Judges of the Supreme Court had failed to frame the relevant rules in the exercise of their rule-making functions in terms of Article 136 of the Constitution, then section 182 (3) would become "meaningless" and "unworkable". Mr. De Silva, P.C. said that if there were no rules of court, the section would be "meaningless". Mr. Choksy, P.C. for the respondent said that if there are no such rules, the word "rules" in section 182 (3) must be given the wider meaning, since it is a principle of statutory interpretation that the words of a statute must be given some meaning.

I agree with learned President's Counsel for the Respondent that the section under consideration should be so construed that it must have

an effect rather than being rendered nugatory. At any rate, unless the words imperatively require it, it is my duty to prefer such a construction. *Ut res magis valeat quam pereat.* (Cf. Dr. Lushington in *The Beta* (97) . As Mr. Choksy, P.C. submitted, we must construe section 182 (3) of the Code of Intellectual Property in such a way that the intentions of the legislature may not be treated as vain or, as Mr. Choksy, P.C. said, "left to operate in the air". (Cf. *Curtis v. Stovin* (98) per Bowen, L. J. ; *Hankey v. Clavering* (99) per Lord Greene, M.R. ; *Craies*, op. cit. p. 69).

A great deal of time has been spent in this case in the Court of Appeal and in this Court on the question whether, and, if so, what subordinate legislation governed appeals in Trade Mark cases. That issue was so magnified and exaggerated as to hide from view and disguise the matter to be determined in this case. With great respect, I am unable to understand the relevance of the existence or abrogation of the Civil Appellate Rules, or for that matter any rules, to the question to be decided. Although learned President's Counsel for the Appellant in the Court of Appeal, and for some time before this Court, relied upon the existence of rules for the validity of his argument with regard to the meaning of section 182 (3), he agreed with me in the course of his reply that the section would not be rendered meaningless if in fact there was no subordinate legislation. Section 182 (3) or any other law could have been passed without any existing rules or other subordinate legislation, such as regulations made by a Minister or rules made by a Court. Subordinate legislation by way of rules and regulations are required for a variety of reasons : legislation requires far more detail than Parliament itself has time or inclination for ; some details of the overall legislative scheme may need to be tentative or experimental and delegated legislation through rules and regulations would afford an easy means of adjusting the scheme on account of new developments or for other reasons, including an emergency, without further recourse to the long, difficult and uncertain process of submitting the matter for the approval of the Cabinet of Ministers and then obtaining the approval of Parliament. Further, it is not usually possible to see how the legislation would operate in practice, for the exact terms of a law cannot be known until the legislation is passed. Important amendments may be introduced at the last moment. Therefore, after consultation with the persons concerned when the skeleton of the law is visible, rules and regulations to provide the flesh and blood and bring the scheme into full workable operation would be provided by the responsible Minister in the case of regulations, or by a Court of Law or

other authority designated by Parliament (Cf. Bennion, op. cit. p. 132). The existence or absence of any rules has nothing whatsoever to do with the matter which was before the Court of Appeal and that which is before this Court.

After stating that it had been argued that the Civil Appellate Rules were yet in force, Wijeyaratne, J. states as follows at p. 4 of the Judgment of the Court of Appeal :

“It should be remembered that what is conserved are rules relating to exercise of jurisdiction by a Court which is vested with jurisdiction. We are concerned here with rules relating to procedure in appeals and not rules relating directly to the exercise of jurisdiction though it may be argued that rules relating to appellate procedure also relate to jurisdiction of courts.”.

Section 754 (1) of the Civil Procedure Code lays down the procedure to be followed where a dissatisfied litigant wishes to appeal from a final judgement of a District Court. It is the foundation of the jurisdiction of the Court of Appeal in the case of appeals from final judgments of the District Court in Trade Mark cases in terms of section 182 (3) of the Code of Intellectual Property. The jurisdiction fails in this case because the terms of section 754 (1) of the Civil Procedure Code have not been complied with.

Learned President's Counsel for the Respondent does not dispute the fact that if there was no leave to appeal required, there was no jurisdiction. However, he submits that because (1) the Respondent had been using a certain Trade Mark for over fifty years ; (2) the Respondent did not go before the wrong Court ; (3) no prejudice will be caused by this Court doing as he recommends, this Court should “request” the Court of Appeal to entertain a petition from the Respondent by way of revision in terms of Article 13 of the Constitution. Learned President's Counsel for the Respondent cited the decisions in *Juanis v. Engo Nona* (100) and *Fernando v. Fernando* (101) in support of his submission. Those cases were decided before the present Constitution and provide no guidance as to what we may now do. In terms of Articles 118 and 127 of the Constitution, this Court is the “highest and final superior Court of record in the Republic” to which shall be submitted for correction all errors in fact or in law committed “by the Court of Appeal or any Court of First Instance, tribunal or other institution”. In the exercise of its Appellate Jurisdiction

the Supreme Court may "affirm, reverse or vary" any order or judgment decree or sentence of the Court of Appeal, where an appeal lies to the Supreme Court ; but the Court has no power to make requests of the sort suggested by Mr. Choksy, P. C.

In conclusion, in expressing the decision of the Court of Appeal, Wijeyaratne, J. states as follows :-

"The present Civil Procedure Code was enacted in 1977 and the Code of Intellectual Property Act in 1979. Therefore when section 182 (3) of the Code of Intellectual Property Act, No. 52 of 1979 provided that appeals shall be "governed by the rules which govern interlocutory appeals from the District Court", obviously they refer to the procedure laid down in sections 754 (2) and 756 (2), (3), (4), (5), (6) and (7) and any rules relative thereto framed by the Chief Justice and other Judges of the Supreme Court under Article 136 of the Constitution. Hence the Appellant-petitioner has followed the correct procedure in this appeal."

With great respect this is a *non sequitur*. The dates of the enactment of the Civil Procedure Code and the Code of Intellectual Property do not logically lead to the conclusion arrived at by the Court of Appeal.

For the reasons stated in my judgment I set aside the judgment of the Court of Appeal and allow the appeal with costs.

H. A. G. De SILVA, J.—I agree.

KULATUNGA, J.

The appellant (Stassen Exports Ltd.) was, despite the objections of the respondent (Brooke Bond Ceylon Ltd.) successful in obtaining a decision from the Registrar of Trade Marks in terms of the provisions of section 105-107 of the Code of Intellectual Property Act, No. 52 of 1979 for the registration of a Trade Mark "Spring Brand" for use in the tea trade. The respondent's appeal to the District Court against the Registrar's decision was dismissed whereupon the respondent seeking to avail himself of the right of appeal under section 182(3) of the Act applied for leave of the Court of Appeal under section 754(2) read with section 756(2) to (6) of the Civil Procedure Code (Cap. 101). Such leave was sought in view of the provisions of section 182(3) which reads—

"Every judgment or order of the District Court under this Code shall be subject to an appeal to the Court of Appeal and such appeal shall

be subject to the rules which govern interlocutory appeals from District Courts”.

The appellant took a preliminary objection to the application for leave to appeal on the ground that the appeal being from a final judgment, the right of appeal is unqualified and requires no leave for its exercise ; that the appeal should have been lodged under section 754(1) (read with sub-sections (3) to (5) thereof and sections 755, 757 and 758) of the Civil Procedure Code. The relevant provisions requires the giving of a notice of appeal to the District Court with security for the respondent's costs of appeal. This has to be followed by a petition of appeal to be presented to the District Court. It was the appellant's position that sections 754(2) and 756(2) to (6) pertaining to leave to appeal have no application to an appeal under section 182(3) of Act No. 52 of 1979.

It was submitted that whenever the legislature intended to impose the requirement of leave to appeal it did so expressly by the use of the words “with the leave of the Court of Appeal first had and obtained ” *e.g.* section 13(3)(b) of the Judicature Act, No. 2 of 1978. More examples were cited before us namely sections 15(a) and 16(1) of the said Act and section 62(1) of the Muslim Marriage and Divorce Act (Cap. 115). It was contended that in the absence of specific provision, section 182(3) of Act No. 52 of 1979 cannot be construed as requiring an aggrieved party to obtain leave to appeal in terms of section 754(2) and 756(2) to (6) of the Civil Procedure Code.

It was argued that section 182(3) of Act, No. 52 of 1979 repeated the language of section 50 of the repealed Trade Marks Ordinance (Cap. 150) which was in existence at a time when there was no requirement of getting leave to appeal from any decision of a District Court. An appeal was then subject only to the Civil Appellate Rules 1938 (Subsidiary Legislation (1956) Vol. I) relating to the furnishing of typewritten copies of the record and the fees payable therefor ; that the said Rules were kept in force by section 3(2) of the Administration of Justice Law, No. 44 of 1973 pending the making of new rules ; no such rules were made until the repeal of the Administration of Justice Law. Various chapters of the Administration of Justice Law were repealed between 1977 and 1979 but section 3(2) was not repealed and hence Civil Appellate Rules 1938 remained in force even after the promulgation of the 1978 Constitution as no rules on the subject of typewritten copies of records have been made by the Supreme Court under Article 136 of the Constitution.

It was therefore urged that the words "rules which govern interlocutory appeals from a District Court" in section 182(3) of the Act No. 52 of 1979 bear the same construction as under section 50 of the repealed Trade Marks Ordinance and refer to the Civil Appellate Rules 1938 and not to the provisions of sections 754(2) and 756(2) to (6) of the C.P.C..

It was submitted that in the circumstances, the absolute right of appeal under section 23 of the Judicature Act of 1978 remain untouched and the appeal was bed for non-compliance with section 754(1) and the other relevant provisions of the C.P.C..

The Court of Appeal held that in the context of the provisions of the Administration of Justice Law and the Civil Procedure Code relating to appeals from orders given in the course of an action which do not dispose of the rights of parties (which orders are now described as interlocutory orders) and the rules made under the A.J.L. and Article 136 of the Constitution. The Civil Appellate Rules 1938 have become absolute. Consequently, the words "rules which govern interlocutory appeals" in section 182(3) of Act No. 52 of 1979 refer to the procedure laid down in sections 754(2) and 756(2) to (7) of the C.P.C. and any rules relative thereto made under article 136 of the Constitution. In the result, the Court made order over-ruling the preliminary objection. The appellant has preferred this appeal against that order.

When Mr. H. L. de Silva, P.C., learned Counsel for the appellant was making his submissions before us on 30.07.90, Mr. Choksy, P.C., learned Counsel for the respondent said that the Supreme Court has made rules relating to copies of records in appeals to the Court of Appeal and produced a copy of the Supreme Court (Court of Appeal—Appellate Procedure—Copies of Records) Rules 1978 published in Gazette (Extraordinary) No. 18/6 of 10th January, 1979. On 31.07.90, Mr. H. L. de Silva, P.C., informed us that he would not press his argument based on the survival of the Civil Appellate Rules, 1938 but maintained that the order appealed from is nevertheless wrong particularly for the reason that if section 182(3) of Act No. 52 of 1979 is construed as requiring leave to appeal, it would involve an implied repeal of the unlimited right of appeal under section 754(1) of the C.P.C. which is not permissible in the absence of clear language. He submitted that the words in section 182(3) are insufficient to derogate from the plenary right granted by section 23 of the Judicature Act which provides *inter alia*, "any party who shall be

dissatisfied with any judgment, decree or order pronounced by a District Court may (except where such right is expressly disallowed) appeal to the Court of Appeal..... ”

Learned Counsel for the parties addressed us at length on the interpretation of section 182(3) of Act No. 52 of 1979. We listened with interest to their submissions in support of which each of them relied upon substantially the same rules of construction but with a different emphasis. This was the position until the last day of the hearing when in the course of his reply to Mr. Choksy's submission, Mr. H. L. de Silva informed us that he was abandoning some of the grounds which he had earlier urged before us in support of the appeal. Notwithstanding such fluctuations in the argument each Counsel endeavoured to discover the intention or the supposed intention of Parliament in enacting section 182(3). It seems to me that the relevant question is, what is the construction that we should put on that section primarily in the light of the words used and bearing in mind the rules of interpretation relied upon by Counsel. I shall now set out the submission of Mr. H. L. de Silva, P.C., and the counter submissions of Mr. Choksy, P.C.. This will be followed by a summery of Mr. H. L. de Silva's reply to Mr. Choksy's counter submissions and my own determination of this appeal.

Submissions -

Despite the failure of the argument based on the survival of the Civil Appellate Rules, 1938 it is submitted -

- (a) that when the legislature used the word "interlocutory" the legislature assumed the existence of rules. If no rules existed the word "interlocutory" is a mistake and should be disregarded, though such mistake is not to be lightly assumed. The Court has a limited power to add to or ignore statutory words to prevent a provision from being absurd or totally unreasonable (*Bindra* Interpretation of Statutes 6th Ed. 19; *Cross* Statutory interpretation 2nd Ed. 96);
- (b) that in this context the word "rule" should be given its legal meaning of subsidiary law. It has been used in that sense in section 49 of the Courts Ordinance (Cap. 6), section 15 (1) of the A. J. L. and Article 136 of the Constitution and it should be understood accordingly unless it appears from the context that the legislature has used it in a popular or more enlarged sense (*Bindra* 191);

- (c) that giving the word 'rule' a wider meaning to include the leave to appeal provisions of the C.P.C. would qualify the absolute right of appeal which existed for 100 years and would in some way radically amend Section 754 (1) of the C.P.C. and would derogate from the plenary right of appeal under Section 23 of the Judicature Act. Even if two interpretations are possible one that leaves the law unaltered is to be preferred against that which drastically alters it *Ananti v. Chhannu (85)*.

Counter Submissions –

(a) We cannot assume a mistake in an Act of Parliament and cannot add to or take away from a statute unless it is clear that the legislature intended something which it has failed precisely to express (Bindra 180). Every word in a statute should be given a meaning. A construction which would leave without effect any part of the language of a statute will normally be rejected (*Maxwell* 12th Ed. 36). The words of a statute should generally be understood in the sense which they bore when it was passed. Every Act of Parliament should be construed with reference to the state of the law and of judicial decisions subsisting when it came into operation, and when it is to be applied; it cannot otherwise be rationally construed. (Bindra 326; *Maxwell* 36; *Halsbury* 4th Ed. Vol. 44 para 899). Mr. Choksy cited *Savings and Investment Bank v. Gasco (102)* in which the Court had to decide whether contempt proceedings for breach of an interlocutory injunction constitute "interlocutory proceedings" within R.S.C. Ord. 41, para 5 (2). This decision though not directly in point here, is helpful on the question as to how words should generally be understood. Nicholls, L.J. thought that comprehensive definitions of "interlocutory" and "final" are probably impossible and said (p. 992) –

"But the essence of the distinction seems to me to lie in the connotation, implicit in the phrase, that in general "interlocutory proceedings" are proceedings other than the trial of the action or the equivalent hearing in the case of an originating summons or other originating process. The trial of an action or the equivalent stage of other originating process would, in general, be regarded as final Broadly, that is how, as it seems to me, the terms 'interlocutory' and 'final' would be understood by lawyers".

It was argued that the present C.P.C. which came into force in 1977 incorporated specific provisions pertaining to "interlocutory appeals" (as

defined in judicial decisions) and in this regard followed the provisions of Chapter IV of the A.J.L. 1973. The Code of Intellectual Property Act was enacted in 1979. Therefore, whatever be the history of Section 182 (3) of the Act and however it may have been interpreted in a different statutory context, it must be interpreted today in the light of the provisions of the C.P.C. pertaining to interlocutory appeals and in the context of the absence of the Civil Appellate Rules 1938 and that a lawyer advising his clients is entitled to so understand the section. Mr. H. L. de Silva states that hitherto no leave has been applied for in appeals under Section 182 (3). Mr. Choksy, P.C. states that appeals in Intellectual property matters are coming up only now in view of recent developments in the economy and hence the Court had hitherto no occasion to consider this question. I think that the proper course would be to decide the question without paying regard to these statements of Counsel as to their experience in litigation in this sphere.

(b) The contention that "rules of procedure" in Section 182 (3) should be narrowly construed limiting its application to Subsidiary Law is untenable. If it is right, then the section has no meaning because there were no such rules when the Act was passed ; hence Parliament did not refer to 'rules' in the sense of subsidiary law ; or it should be so construed. What is more for 11 years after the Act, no rules applicable to interlocutory appeals have been made by the Supreme Court. This is because 'rules' in this context include the rules of procedure enacted by the C.P.C. ; in fact no rules e.g. relating to the furnishing of copies of records are required because an applicant seeking leave to appeal has of necessity to obtain them from the District Court to be filed with his application. An appellant is entitled in his capacity of a party to the proceedings before the District Court to obtain copies of records. Further in the context of the law of evidence and civil procedure the term 'rules' include substantive law e.g. Section 2 of the Evidence Ordinance (Cap. 14) ; The proviso to Section 4 of the C.P.C. ; Sections 285(2), 511 and 777 of the C.P.C.. Maxwell p. 320 under the heading "Rules of Procedure" says "enactments regulating the procedure in Courts are usually construed as imperative".

(c) The right of appeal in Section 23 of the Judicature Act is not absolute. Article 138 of the Constitution in conferring appellate jurisdiction on the Court of Appeal provides that its exercise shall be subject to the provisions of the Constitution or of any law. Although this

jurisdiction cannot be easily taken away, it may be regulated by law – e.g. by a provision for getting leave. Such provision is not a fetter or burden on the right of appeal. Every person can file an application for leave to appeal. Such procedure would be reasonable and appropriate particularly for avoiding laws delays in intellectual property matters where a dispute could hold up trading and commercial transactions which are vital to the economy. In any event, the Court should construe the statute according to the words used. If it is suggested that the statute has a wider sweep or that it exceeds the legitimate interest, then it is for the legislature to correct it by an amendment. *Stock v. Frank Jones (Tipton) Ltd.* (12). The Court cannot say that it will reject the legislation unless there is manifest absurdity.

Reply to Counter Submissions –

In reply Mr. H. L. de Silva, P.C. said –

- (a) that he would not challenge the comprehensiveness of the term ‘rules’ which in a particular context may mean the law of civil procedure or evidence. However, in Section 182 (3) “rules” has a technical meaning. He informed us that he is giving up his submission based on the ground that the word “interlocutory” in the section is a mistake and hence it should be disregarded but reiterated his submission for an unlimited right of appeal. In doing so he emphasised that the section contemplates rules which the Supreme Court may have made (touching interlocutory appeals). The fact that no such rules have been made does not render the section meaningless because in the absence of express words requiring leave to appeal, the right of appeal against a final judgment remains unaffected ;
- (b) that in 1979 the legislature should be presumed to have known that an appellant under the corresponding Section 50 of the repealed Trade Marks Ordinance was (by the use of similar words as found in Section 182 (3)) afforded a benefit namely a lower rate of fees for copies of the record ; that the legislative history is relevant – *Maxwell* 12th Ed. p.64,66 ; *Registrar of Restrictive Trading Agreements v. W. H. Smith & Son Ltd.* (39) in which it was held that the word ‘officer’ in Section 15 (3) of the Restrictive Trade Practices Act, 1956 had a narrower meaning of a person in charge of the affairs of the company as a whole at the centre and did not include a branch manager for the purposes of

an application under Section 15 to summon him to attend and be examined before a Judge. Counsel drew our attention to p. 1552 where Cross J. said –

“Further the words “director, manager, secretary or other officer” appear to derive from Section 455 (1) of the Companies Act, 1948, which says that unless the context otherwise requires the expression “officer” in relation to a body corporate includes a “director, manager or secretary”. It would, therefore, be natural to give the same meaning to the words in the Act of 1956 as they would be given in the Act of 1948”.

- (c) that giving a wider meaning to ‘rules’ would necessarily conflict with the right of appeal under Section 23 of the judicature Act and curtail the right under Section 754(1) of the C.P.C..It would confer a new power on the Court of Appeal to grant leave even in appeals from final judgements ; that in the absence of express provision deeming appeals under Section 182(3) to be interlocutory appeals, this Court should give the term ‘rules’ the narrower meaning which would preserve the unlimited right of appeal ; that in the context, the rationale given by Mr. Choksy to justify the requirement of leave to appeal namely the need to avoid law’s delays in intellectual property matters is wholly untenable.

I have set out the case for the parties, their submissions and the appellant’s reply in some detail in deference to the able arguments of counsel and in particular Mr. de Silva’s complaint that the interpretation of Section 182(3) of Act No. 52 of 1979 upholding the procedure adopted by the respondent is obviously wrong, is contrary to well known rules of interpretation and is derogatory of rights of litigants enjoyed for 100 years. In determining the issue the following dicta of the House of Lords and citations from Halsbury and Bindra appear to be relevant. In *Stock v. Frank Jones (Tipton) Ltd.* (12) Viscount Dilhorne said –

“It is now fashionable to talk of a purposive construction of a statute, but it has been recognised since the 17th century that it is the task of the judiciary in interpreting an Act to seek to interpret it ‘according to the intent of them that made it’. If it were the case that it appeared that an Act might have been better drafted or that amendments to it might be less productive of anomalies, it is not open to the Court to remedy the defect. That must be left to the Legislature”.

At page 953 – 954 Lord Simon sets out certain guidelines which he describes as being “essential to the proper judicial function in the constitution to bear in mind” one of which is “that Parliament is nowadays in continuous session, so that an unlooked – for an unsupportable injustice or anomaly can be readily rectified by legislation ; this is far preferable to judicial contortion of the law to meet apparently hard cases with the result that ordinary citizens and their advisers hardly know where they stand.

All this is not to advocate judicial supineness ; it is merely respectfully a self-knowledge of judicial limitations, both personal and constitutional”

Halsbury 4th Ed. Vol. 44 para 862 comments thus –

“There is a strong presumption that Parliament does not make mistakes. If blunders are found in legislation, they must be corrected by the legislature, and it is not the function of the Court to repair them”.

Bindra 6th Ed. p. 400 states –

“The rule of construction is ‘to intend the legislature to have meant what they actually expressed’. The meaning of the Act is to be interpreted not with reference to what its framers intended to do, but with reference to the language which they did in fact employ”.

I am in respectful agreement with the above quoted views. Mr. H. L. de Silva submits that Section 182(3) of Act No. 52 of 1979 does not require the obtaining of leave to appeal because the Legislature has failed to use the well known formula for imposing such requirement and that giving “rules” a narrower meaning would not make the section unworkable. Mr. Choksy submits that such perfection in drafting cannot be always expected ; that where the legislation is not so perfect the Court has to interpret the statute ; that in the instant case the words used, when construed in the light of the applicable principles lead to the result that the correct procedure of an appeal under Section 182(3) requires the leave of the Court of Appeal to be obtained ; that this construction is reinforced by the fact that the section refers to “every judgement or order” ; and that such construction cannot be said to prejudice the substantive rights of the respondent.

I have to compare Mr. Choksy’s submission with the very attractive submission of Mr. de Silva and consider whether the former can be preferred without doing violence to the applicable rules of interpretation

in particular the construction which favours the preservation of rights. I do not think that in this case, we can gather what in fact was the intention of Parliament. The words used are not helpful to ascertain the legislative intent in that sense. Therefore, we have to construe the statute and give it a meaning, objectively ; and the Parliament will be presumed to have intended the meaning implicit in such construction.

Mr. Choksy's submission is supported by the passage in Bindra 6th Ed. p. 400 and the views of Viscount Dilhorne and Lord Simon in *Stock v. Frank Jones (Tipton) Ltd.*, 'Supra) and *Savings and Investment Bank v. Gasco (Supra)* (dicta of Nicholls LJ) which I have referred to earlier in this judgment. Nicholls LJ emphasised how the expression "interlocutory proceedings" would be understood by lawyers. The House of Lords considered it important to safeguard ordinary citizens and their advisors against efforts by Judges to meet apparently hard cases which ought to be left to the Legislature.

In the instant case how may lawyers understand the terms in Section 182 (3) after its enactment in 1979 ? Mr. de Silva suggests that since no leave to appeal was being sought even after 1979 lawyers had understood the section as unqualified ; if no leave was being sought this can be due to the force of habit whereby lawyers merely continued with the practice prior to 1979 ; but if one applied one's minds to the words one would, in the state of the law and judicial decisions as in 1979, ordinarily understand them as imposing the requirement of leave to appeal. On the other hand, Mr. de Silva's analyses, despite its force, does not appear to reflect how lawyers in general would understand the section in the usual course. Thus, before Mr. de Silva concluded his argument he went through the motions of abandoning the argument based on the survival of the Civil Appellate Rules, 1938, mistake of the Legislature and the redundancy of the word 'interlocutory'. At the final stage, he had to reformulate his submission to make it persuasive in view of the strong submissions which had been made against his construction. I do not think that lawyers who do not have the benefit of a full argument in Court which was available to the learned Counsel who appeared in this appeal can fairly be required to go through such motions in advising their clients. In this context, I am also of the view that the decision in *Registrar of Restrictive Trading Agreements v. W. H. Smith & Son Ltd.*, relied upon by Mr. de Silva is not of assistance.

However, the vital issue for decision is whether the construction placed by the Court below is an erosion or diminution of a right or leads to an implied repeal of Section 754 (1) which is not permitted by any rule of interpretation. In view of the fact that there was much controversy on this issue I am compelled to examine the relevant rules closely. These rules are discussed under the heading 'encroachment on rights' (including vested rights). Statutes which encroaches on rights whether as regards person or property are subject to a strict construction and should be interpreted, if possible, so as to respect such rights. Penal statutes and statutes which impinge on individual liberty are subject to the same construction and in the absence of clear language, the construction which preserve the right will be given. Statutes which impose burdens e.g. revenue statutes, are also strictly construed in favour of the subject – *Maxwell* 12th Ed. 238, 251, 252, 256 ; *Cross Statutory Interpretation* 2nd Ed. 177, 180, 182.

An incident of this approach to legislation is the presumption that a statute does not retrospectively abrogate vested rights. *Maxwell* states –

"In the words of Craies on Statute Law, a statute is retrospective 'which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past' (p. 216).

In the absence of clear provisions, a statute will not be held to be retrospective. If two views are open it will be construed as prospective only.

"If there is any ambiguity about the extent of (the) derogation (by a statute from common law rights), the principle is clear that it is to be resolved in favour of maintaining common law rights unless they are clearly taken away" *Re "Wonderland" Cleethorps* (1965) AC 58 Viscount Simonds at p. 71, cited in *Maxwell* p. 252.

The right of appeal is not a common law right. It is granted by statute. One finds this right discussed under the rule against retrospectivity. In this context, *Bindra* 6th Ed. 205 states –

"There is no difference in principle between abolishing a right of appeal and putting a restriction on that right",

and proceeds to cite – the decision in *Nagendranath v. Mon Mohan Singh*(92) where it was held that Section 174(5) of the Bengal Tenancy

Amendment Act (4 of 1928) which required the making of a deposit was not retrospective in operation and does not apply to appeals arising out of proceedings instituted before coming into operation of the enactment.

At p. 101 the Court observed –

“ The substantive right of appeal which the litigant possesses must be deemed to be prejudicially affected by a new provision which has the effect of attaching to it any clog or disability ”

In *Badruddin Abdul Rahim v. Sitaram Vinayak Apte*(95) the court considered an alteration in Cl. 15 of the Letters Patent Bombay High Court which provided that no appeal from the judgment of one Judge of the Court lies to a Division Bench, if it is made in the exercise of second appellate jurisdiction, except in any case where such a single Judge declares that it is a fit one for appeal. It was held that the alteration is retrospective in application. Fawcett, J. Said (p. 373) –

“The alteration in Cl. 15 does not entirely abolish a former right of appeal ; it merely restricts it in a reasonable manner. The appellant can exercise the right of appeal if he persuades the Judge that it is a fit case for appeal”.

Mirza, J. said (p.375) –

“We have been asked to construe retrospectivity of the amended Cl. 15 strictly as it would deprive the applicant, it is said, of a valuable right of appeal to a Bench of two or more Judges. I do not agree that the clause as amended is unreasonable or imposes an unnecessary burden on the applicant”.

In the instant case, we are not dealing with a common law right or a vested right in the context of the rule against retrospectivity. We are dealing with the statutory right of appeal. The issue relates not to the abolition of the right but to the regulation of its exercise. It is in this light that we have to consider whether the construction relied upon by the respondent is a disallowance of the right of appeal or leads to an implied repeal of Section 754(1) of the C.P.C.. As submitted by Mr. Choksy, anybody can apply for leave to appeal. As the right of appeal is enshrined in Article 138 of the Constitution it cannot be easily taken away. But it may be regulated by the requirement to obtain leave to appeal. That does not constitute a disallowance or a reduction of the substantive right.

In this view of the matter, I see no evil in attempting a rationale to the construction upheld by the Court below. After all one of the theories as to the nature of law regards it as based on reason. Complementary to this theory is the social interests theory. *G. W. Paton Jurisprudance 4th Ed. 117, 136*. Law is, therefore, not a mere abstraction ; so that statutory disciplines in litigation, particularly in spheres which are vital to the life of the community, should be welcome in the social interest and ought not to be challenged in the same manner as one would challenge an encroachment of a common law or a vested right.

For the above reasons, I have no difficulty in adopting the construction of Section 182(3) relied upon by the respondent. Accordingly, I affirm the judgment of the Court of Appeal and dismiss the appeal with costs payable by the appellant.

Appeal dismissed
