

1948

Present: Soertsz S. P. J. and Canekeratne J.

CONTROLLER OF TEXTILES, Petitioner, and MOHAMED MIYA,
Respondent.

*S. C. 478—Application for conditional leave to appeal to the
Privy Council in Application No. 751,419.*

*Privy Council—Conditional leave to appeal—Certiorari quashing order made by
Textile Controller—Civil right—Value of property—Legislative Enactments
Chapter 85, section 3.*

Where the Supreme Court granted a mandate in the nature of a writ of *Certiorari* quashing an order by which the Textile Controller had revoked two licences—

Held, that an appeal lay to the Privy Council under section 3 of Chapter 85 of the Legislative Enactments.

APPLICATION for conditional leave to appeal to the Privy Council.

H. W. R. Weerasuriya, C.C., with *V. Tennekoon, C.C.*, for the petitioner.

H. V. Perera, K.C., with *C. E. L. Wickremesinghe*, for the respondent.

Cur. adv. vult.

January 16, 1948. CANEKERATNE J.—

This is an application for leave to appeal to His Majesty in Council from an order made by this Court. The respondent is a licensed dealer in textiles and the petitioner the Controller of Textiles. The latter made an order revoking two licences, granted to the respondent, on February 22, 1947, and on his application a mandate in the nature of a writ of *certiorari* was issued quashing the order made by the petitioner.

The power to grant leave to appeal is to be found in Chapter 85 of the Ceylon Legislative Enactments which contains substantially the provisions of Ordinance No. 31 of 1909. The application would not be allowed unless the case fulfils the requirements of section 3 of Chapter 85, and the limitations and conditions prescribed by the rules in the Schedule. The applicant must be party to a proceeding in the Supreme Court and that proceeding must be a civil suit or action¹. The relevant rule in the case of an application for leave to appeal is rule one, which is, omitting unnecessary words as follows:—

Subject to the provisions of these rules, an appeal shall lie—

- (a) as of right, . . . where the matter in dispute on the appeal amounts to or is of the value of five thousand rupees or upwards, or where the appeal involves directly or indirectly some claim or question to or respecting property or some civil right amounting to or of the value of five thousand rupees or upwards; and

¹ *Sec. 3 of Chap. 85, C. L. E.*

(b) at the discretion of the Court,, in the opinion of the Court, the question involved in the appeal is one which, by reason of its great general or public importance or otherwise, ought to be submitted to His Majesty in Council for decision.

In support of the application it is said, first that the appeal involves a claim or question to or respecting property of the required value, secondly that it involves a claim or question to or respecting a civil right. It is also urged, that even if these grounds be insufficient to justify a grant, the order granting a mandate has a grave effect upon the power of the Controller of carrying on his work, and that the case is one which ought to be submitted for decision to the Privy Council whatever may be the amount involved in the appeal. To these it was answered that the mandate was issued in a criminal cause or proceeding, but that, if it was a civil matter the case was below the monetary value prescribed by the rule.

In issuing a mandate in the nature of a writ of *certiorari*, this Court exercises an original jurisdiction; proceedings must be initiated in the Supreme Court itself by the person desiring relief. the writ of *certiorari* may be had in either civil or criminal proceedings. It lies to remove for the purpose of quashing the determination of persons or bodies which are by statute entrusted with judicial or quasi-judicial functions out of the ordinary course of legal procedure. Thus Justices of the Peace when acting in the capacity of licensing Justices do not constitute a Court in the ordinary sense of the word but their acts nevertheless are judicial acts and *certiorari* lies in respect of orders made by such persons in the capacity of licensing Justices. From a decision of the original Court (the King's Bench Division) in such a matter an appeal lies to the Court of Appeal (in England) as this is not a case which is of criminal character¹.

The answer to the contentions of the parties depends upon the true construction of the rule. It is an affirmative enactment showing how the Court is to act. It is obvious that the language used in the rule imposes a limitation on the right of an applicant. It may be said that part "a" is only a partial limitation: part "b" on the other hand gives an applicant only a right to submit the question to the discretion of the Judges.

The enactment under which the Controller of Textiles has to act is the Defence (Control of Textiles) Regulations, 1945. The effect of the regulations was to place restrictions on the sale of textiles on the ground probably that the free sale of them was injurious to the public interests or safety. A rule placing such a restriction affects materially the right of a man to carry on a trade or deal in goods. He cannot, since the enactment of the regulations, deal in textiles unless he obtains a licence from the Controller. The power of granting a licence, or the right of refusing it, is conferred on the Controller: he would be expected to exercise the discretion honestly and in the spirit of the enactment. A regulation of this nature has an obvious and close similarity to a law which places restrictions on the sale of intoxicating liquors or poisonous drugs. A power to revoke or call back the licence is conferred on the same authority by regulation 62. The Controller has certain other powers too, e.g., making a punitive order under regulation 58. A revocation of

¹ *R. v. Sunderland Justices (1901) 2 K. B. 357. R. v. Woodhouse (1906) 2 K. B. 501.*

a licence under regulation 62 can hardly be said to be an order made in a criminal proceeding. It is an order of the same species as the grant or refusal of a licence to sell intoxicating liquor, drugs.

The leave of the Court must be obtained under clause "b" that the case is one that is fit to be appealed from. Clause "b" gives the Court a power. But what is the nature of that power? It is a discretionary power: it imposes upon the Judges the duty of determining whether in their view the case is one which is fit to be submitted to the highest tribunal. The question upon an application of this nature is whether, considering all the circumstances of the case, and the interests of the parties and of the public, the case ought to be submitted to His Majesty in Council for decision. If the case involves questions of a complex or highly important nature calling for the view of a superior tribunal for settling the rights of numbers of persons, even if the amount claimed in the action was small, the Judges may well be of opinion that it should be heard in the highest tribunal. There are many other circumstances which would properly influence the decision of a Court as to the propriety of allowing an application such, for instance, as was once remarked, a constitutional right. The refusal or cancellation of a licence may have the effect of preventing a man from carrying on a trade he desires or one he was carrying on but it can hardly be regarded as the denial of the civil right of a person. The words "civil right" are used in contradistinction to the word "property". An order designed to create or to dissolve a status, would affect the civil right of a person—an order that a man should not be permitted to exercise the franchise may, perhaps, be one.

I now come to what is the difficult and certainly the most important part of the case, namely, whether or not the appeal involves some question to or respecting property of the required value. The word "property" is a very comprehensive term, it is descriptive of every possible interest which a person can have, it will include things movable and immovable, corporeal and incorporeal, *e.g.*, a right of action, a patent; thus rights arising from contract would fall within the term. The words respecting property are used in contradiction to the words "to property" and a question about property must arise between two persons—they would include any question whatever that is connected with property, so a question relating to one's property, that is one which affects a person's property in the sense of taking away a part of his property or causing him loss or damage would be one respecting his property. If the effect of an order made by A is to prevent B from taking delivery of goods consigned to him, the order is one relating to the property of B and if a dispute arises between the two as regards the validity of the order there is a question at issue between them. The words "respecting property" are wide enough in scope to enable the petitioner to the relief he seeks. The respondent had, according to his affidavit, stocks of the value of about Rs. 400,000; there were also textiles imported by him lying at the Customs of the value of about Rs. 175,000 and textiles in transit of the value of about Rs. 175,000. He had further placed orders for textiles of the value of about Rs. 8,000,000. He was allowed by the Controller a period of fifteen days within which to dispose of his stocks

(see letter D, referred to in the affidavit). Considering the great demand for textiles at this time, it is probable that he would have been able to transfer a considerable part of the stocks to another dealer or dealers. Even if it is assume that he would be successful in disposing of all his stocks, there would still remain the goods lying at the Customs, which the respondent was not allowed to remove on the orders of the petitioner before the cancellation of the licence and the goods in transit. The estimated value of these is well over Rs. 5,000.

The application for leave to appeal should be allowed with costs.

SOERTSZ S.P.J.—I agree.

Application allowed.
