

1959 *Present* : Weerasooriya, J., and H. N. G. Fernando, J.

PEIRIS, Appellant, *and* DE SILVA, Respondent

IN THE MATTER OF AN APPLICATION UNDER RULE 2 OF THE SCHEDULE
TO APPEALS (PRIVY COUNCIL) ORDINANCE (CHAPTER 86) FOR CONDITIONAL
LEAVE TO APPEAL TO HER MAJESTY THE QUEEN IN PRIVY COUNCIL

S. C. 245—D. C. Colombo (Inty.) 15,908

*Privy Council—Appeal from judgment of Supreme Court—Record to be printed in
England—Fees to be paid to Registrar of Supreme Court—Charges for
preparation of index of certified copy of record—Exemption from liability—
Appeals (Privy Council) Ordinance (Cap. 85), Schedule, Rules 15, 16—Appellate
Procedure (Privy Council) Order, 1921, Schedule 1.*

A person seeking to appeal to the Privy Council in an action the record of which is to be printed in England need not pay any sum of money as charges for preparing an index of the papers and exhibits comprising the certified copy of the record. Neither the Schedule to the Appeals (Privy Council) Ordinance nor any provision in Schedule 1 of the Appellate Procedure (Privy Council) Order, 1921, authorises such a charge.

APPPLICATION for conditional leave to appeal to the Privy Council.

S. M. H. de Silva, for objector-appellant-petitioner.

No appearance for petitioner-respondent.

Cur. adv. vult.

August 26, 1959. WEERASOORIYA, J.—

The question referred to us for a ruling is whether the petitioner, who has obtained conditional leave to appeal to Her Majesty in Council, is liable to pay a sum of Rs. 544 which she has been called upon by the Registrar of this Court to deposit as charges for preparing an index of the papers and exhibits comprising the certified copy of the record of the action which, in order to enable it to be printed in England, has to be transmitted to the Registrar of the Privy Council.

Under section 4 (2) (b) and (c) of the Appeals (Privy Council) Ordinance (Cap. 85) rules may be made, *inter alia*, requiring an appellant to deposit the cost of translating, transcribing, indexing and transmitting to Her Majesty in Council a correct copy of the record and prescribing the fees to be paid to the Registrar of this Court for examining and certifying the same. The amounts and fees payable in respect of all these matters, with the exception of indexing, are already specifically provided for in Schedule 1 to the Appellate Procedure (Privy Council) Order, 1921, made under section 4 of the Appeals (Privy Council) Ordinance. As regards indexing, according to the practice which has obtained for some time the same charge (of 20 cents per folio) is levied as is provided in that Schedule for transcribing the record and examining the transcript, although the work involved in indexing would appear to be much less than that involved in transcribing. The Registrar relies on Rule 16 of the rules in the Schedule to the Privy Council (Appeals) Ordinance as enabling the levying of a charge for indexing. But all that Rule 16 provides is that where the record is to be printed in England the appellant shall bear the expense of transmitting the certified copy of the record together with the index, just as it is provided in the preceding Rule 15 that when the record is printed in Ceylon forty copies of it shall be transmitted to the Registrar of the Privy Council at the expense of the appellant.

In my opinion Rule 16 has no application, and in the absence of any other rule in the Schedule to the Privy Council (Appeals) Ordinance or any provision in Schedule 1 to the Appellate Procedure (Privy Council) Order, 1921, which authorises the charge of Rs. 544 or any charge at all, for indexing, I would hold that the petitioner is not liable to pay this sum.

H. N. G. FERNANDO, J.—I agree.

Appellant's objection upheld.