[IN THE PRIVY COUNCIL]

1958 *Present:* Lord Morton of Henryton, Lord Tucker, Lord Cohen, Lord Denning and Mr. L. M. D. de Silva

H. E. TENNEKOON (Commissioner for Registration of Indian and Pakistani Residents), Appellant, *and* P. K. DURAISAMY, Respondent

Privy Council Appeal No. 18 of 1956

S. C. 517—Application No. J. 514

Appeals (Privy Council) Ordinance (Cap. 85)—Section 3 and Rule 1 (b) of Schedule—"Civil suits or actions"—Civil Procedure Code, ss. 5, 6—Courts Ordinance (Cap. 6), s. 2—Charter of 1833, s. 52.

Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949—Citizenship by registration—Sections 6 and 22 (as amended by s. 4 of Act No. 3 of 1950)—"Permanently settled in Ceylon"—Proof of permanent settlement—Evidence of change of Indian domicile not necessary—Declarations in "B Forms"—Evidential value thereof.

(i) The words "civil suits or actions" in section 3 of the Appeals (Privy Council) Ordinance are not limited to proceedings in which one party sues for or claims something from another in regular civil proceedings. *Silverline Bus Co. Ltd. v. Kandy Omnibus Co. Ltd.* (1956) 58 N. L. R. 193, partly overruled.

An appeal to the Supreme Court under section 15 of the Indian and Pakistani Residents (Citizenship) Act is a "civil suit or action in the Supreme Court" within the meaning of section 3 of the Appeals (Privy Council) Ordinance. Accordingly, it is competent to the Supreme Court to grant leave to appeal to the Privy Council on the ground that the question involved in the appeal is one of "great general or public importance" within the meaning of Rule 1 (*b*) of the Schedule to the Appeals (Privy Council) Ordinance.

(ii) Section 6 (1) of the Indian and Pakistani Registration (Citizenship) Act No. 3 of 1949, read with section 22 (as amended by section 4 of Act No. 37 of 1950), places upon the applicant for registration the burden of proving that he has "permanently settled in Ceylon" and, "in addition", of proving the matters set out in section 6 (2). In order to discharge this burden of proof he must supply evidence that at the time of his application he has the intention of settling permanently in Ceylon. An applicant provides evidence of this intention if, having satisfied all the other conditions laid down in the Act, he demonstrates it by electing irrevocably to apply for registration. Such evidence, however, establishes only a *prima facie*, and not conclusive, case for registration as a citizen of Ceylon; it does not preclude the Commissioner from coming to a decision, after considering all relevant matters, that at the time of his application the applicant had not a genuine intention to settle permanently in Ceylon.

The question of proving a change of Indian domicile is not involved in the consideration of the evidence that is necessary to prove permanent settlement in Ceylon.

The fact that the applicant made declarations of temporary residence in Ceylon in "B Forms" for the purpose of remitting a few sums of money to his dependants in India does not *per se* negative the fact of his permanent settlement in Ceylon, especially when the declarations were not "fortified and carried into effect by conduct and action consistent with the declared expression".

2—J. N. B 5115-1,493 (7/58).

APPEAL from a judgment of the Supreme Court reported in *56 N. L. R. 313.*

Sir Frank Soskice, Q. C., with *M. Solomon*, for the appellant.

Walter Jayawardene, with *Sirimevan Amerasinghe*, for the respondent.

Cur. adv. vult.

May 19, 1958. [*Delivered by* LORD MORTON OF HENRYTON]—

This is an appeal from the Supreme Court of Ceylon. It will be convenient to refer to the appellant as "the Commissioner" and to the respondent as "the applicant".

On the 29th March, 1951, the applicant applied for registration as a citizen of Ceylon, under Section 4 (1) of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, hereafter referred to as "the Act". His application was refused by Mr. Adihetty, one of the Deputy Commissioners, on the 25th January, 1954, but an appeal by the applicant to the Supreme Court of Ceylon was successful. The Commissioner now appeals from the decision of the Supreme Court, with the leave of that Court.

Before counsel for the Commissioner opened the appeal, counsel for the applicant took a preliminary objection to the jurisdiction of the Board, on the ground that the Supreme Court had no power to give leave to appeal to Her Majesty in Council in this case. Their Lordships held that this objection failed, for reasons which will be stated later.

The main question in the appeal is whether the Deputy Commissioner who dealt with this case was justified in holding that the applicant had failed to prove that he was "permanently settled in Ceylon", within the meaning of section 22 of the Act (as amended by section 4 of the Indian and Pakistani Residents (Citizenship) (Amendment) Act, No. 37 of 1950).

The Act came into operation on the 5th August, 1949. It makes provision for granting the status of a citizen of Ceylon to Indian and Pakistani residents in Ceylon who are possessed of a special residential qualification upon the conditions and in the manner therein prescribed. The residential qualification is defined in section 3 as consisting of "uninterrupted residence in Ceylon" immediately prior to the 1st day of January, 1946, for a period of not less than 10 years (in the case of a single person) or 7 years (in the case of a married person) combined with "uninterrupted residence in Ceylon" from the 1st day of January, 1946, until the date of the application for registration. Continuity of residence is to be deemed to be uninterrupted by occasional absences from Ceylon not exceeding twelve months in duration on any one occasion. Section 4 of the Act provides that any Indian or Pakistani resident possessed of this residential qualification "may, irrespective of age or sex exercise the privilege of procuring registration as a citizen of Ceylon for

himself or herself, and shall be entitled to make application therefor" in the manner prescribed by the Act. The section further permits the additional registration of wives and of dependent minor children ordinarily resident in Ceylon and, in certain defined circumstances, extends the privilege of procuring registration to widows and orphaned minor children of Indian or Pakistani residents.

Section 6 of the Act (as amended by section 3 of the said Act No. 37 of 1950) provides as follows :—

"It shall be a condition for allowing any application for registration under this Act that the applicant shall have—

(1) first proved that the applicant is an Indian or Pakistani resident and as such entitled by virtue of the provisions of sections 3 and 4 to exercise the privilege of procuring such registration, or that the applicant is the widow or orphaned minor child of an Indian or Pakistani resident and as such entitled by virtue of those provisions to exercise the extended privilege of procuring such registration; and

(2) in addition, except in the case of an applicant who is a minor orphan under fourteen years of age, produced sufficient evidence (whether as part of the application or at any subsequent inquiry ordered under this Act) to satisfy the Commissioner that the following requirements are fulfilled in the case of the applicant, namely—

(i) that the applicant is possessed of an assured income of a reasonable amount, or has some suitable business or employment or other lawful means of livelihood, to support the applicant and the applicant's dependants, if any;

(ii) where the applicant is a male married person (not being a married person referred to in paragraph (*a*) of section 3 (2)), that his wife has been ordinarily resident in Ceylon, and, in addition, that each minor child dependent on him was ordinarily resident in Ceylon while being so dependent;

(iii) that the applicant is free from any disability or incapacity which may render it difficult or impossible for the applicant to live in Ceylon according to the laws of Ceylon;

(iv) that the applicant clearly understands that, in the event of being registered as a citizen of Ceylon—

(*a*) the applicant will be deemed in law to have renounced all rights to the civil and political status the applicant has had, or would, but for such registration in Ceylon, have had, under any law in force in the territory or origin of the applicant or the applicant's parent, ancestor or husband, as the case may be, and

(*b*) in all matters relating to or connected with status, personal rights and duties and property in Ceylon, the applicant will be subject to the laws of Ceylon."

Section 22 of the Act (as amended by section 4 of the said Act No. 37 of 1950) defines an "Indian or Pakistani resident" as

"a person—

(*a*) whose origin was in any territory which, immediately prior to the passing of the Indian Independence Act, 1947, of the Parliament of the United Kingdom, formed part of British India or any Indian State, and

(*b*) who has emigrated therefrom and permanently settled in Ceylon,

and includes—

(i) a descendant of any such person;

and

(ii) any person permanently settled in Ceylon, who is a descendant of a person whose origin was in any territory referred to in the preceding paragraph (*a*);"

The Act makes provision for the appointment of an officer to be known as the Commissioner for the Registration of Indian and Pakistani Residents, of Deputy Commissioners and of investigating officers. Applications for registration are to be addressed to the Commissioner or a Deputy Commissioner and are to be in a prescribed form containing all relevant particulars and supported by affidavit. Certified copies of documents may also be submitted. Each application is to be referred to an investigating officer for investigation and report, and the Commissioner (or Deputy Commissioner) is to take such report into consideration in dealing with the application. Where he is of opinion that there is a *prima facie* case for allowing the application, he must give public notice that, in the absence of any written objection received by him within a month, an order allowing the application will be made, and, in the absence of any such objection, the application is to be allowed. If any objection is received, an enquiry into the nature of the objection is to be ordered.

Where the Commissioner (or Deputy Commissioner) is of opinion that a *prima facie* case has not been established, he must serve on the applicant a notice setting out the grounds on which the application will be refused and giving the applicant an opportunity within three months to show cause to the contrary. If no cause is shown, an order refusing the application is made. If cause is shown, an enquiry is to be ordered, unless the Commissioner (or Deputy Commissioner) takes the steps he is authorised to take when there is a *prima facie* case for allowing an application (s. 9 (3)).

Such enquiry is to be conducted by the Commissioner or a Deputy Commissioner, who is to have all the powers of a District Court to summon witnesses, compel the production of documents and administer oaths, but the proceedings are to be as far as possible "free from the formalities and technicalities of the rules of procedure and evidence applicable to a court of law", and may be conducted "in any manner not consistent with the principles of natural justice, which to him"

(the Commissioner or Deputy Commissioner) " may seem best adapted to elicit proof concerning the matters that are investigated ". At the close of such an enquiry, the Commissioner (or Deputy Commissioner) must either take the steps he is authorised to take whenever there is a *prima facie* case for allowing an application, or make an order refusing the application.

Section 15 of the Act provides that an appeal against an order refusing or allowing an application is to lie to the Supreme Court.

The applicant applied, on the 29th March, 1951, to be registered under the Act as a citizen of Ceylon together with his family, stating in his application that he was a married man, an Indian or Pakistani resident, had been continuously resident in Ceylon during the period of seven years commencing on the 1st January, 1939, and ending the 31st December, 1945, and from the 1st January, 1946, to the date of the application, and making a declaration in the terms of section 6 (2) (iii) and (iv) of the Act. In his supporting affidavit he deposed that he had been born in India on the 1st July, 1912, and had been married in April, 1932, and that he was employed as Head Clerk at Glentilt Estate, Maskeliya, having also a share of Rs. 2,000 in boutique No. 13, Main Street, Maskeliya. In his covering letter he stated that he came to Ceylon in March, 1931, went back to India for his marriage in April, 1932, and returned to Ceylon with his wife in June, 1934, " from which time I am continually residing in Ceylon with my wife and children. My 4 children are all born in Ceylon.

" During the above period of our stay in Ceylon, I had been to India with my family to see my aged parents and relations on 4 occasions and stayed in India not more than 15 days during each trip, and we did not visit India during 1942-49. "

The application was supported by a letter from one M. G. E. de Silva, a Justice of the Peace of Maskeliya, who wrote that from the year 1934 the applicant and his family had " been continually resident in Ceylon with the exception of short leaves which amounted to not more than one month on each occasion. "

In the course of the investigation, the applicant produced to the investigating officer a certificate dated 18th August, 1951, from the Superintendent of Brunswick Group, Maskeliya, where he had been employed from September, 1934, to September, 1944, stating that " according to Mr. Duraisamy's statement, verified by the Estate records, he and his family had been in continuous residence on this estate, except for short visits to India for about 15 days once in two years. "

On the 28th January, 1952, the applicant answered a questionnaire stating that the only visit he, his wife and minor children had paid to India or Pakistan since 1st January, 1936-1st January, 1939, was a visit to India in April, 1942, for one month to see his mother and he further declared that he had remitted sums of Rs. 70 in May, June and July, 1951, to India for his mother. He subsequently stated, in answer to an enquiry from the office of the Commissioner for the Registration

of Indian and Pakistani Residents, that these remittances were made under the estate-group scheme on special permit obtained from the Exchange Controller, Colombo, and that he had declared himself on the appropriate forms of application for this purpose, known as "B" forms, to be temporarily resident in Ceylon.

On the 9th September, 1952, R. T. Ratnatunga, a Deputy Commissioner for the Registration of Indian and Pakistani Residents, gave the applicant notice that he had decided to refuse his application for registration unless he showed cause to the contrary within a period of three months. The grounds for such refusal were specified as follows :—

> "You have failed to prove that you had permanently settled in Ceylon; the contrary is indicated by the fact that, in seeking to remit money abroad, you declared yourself to be temporarily resident in Ceylon."

The applicant replied on the 26th September, 1952, stating the purpose of the remittances to be for the maintenance of his mother and two invalid sisters, and requesting a reconsideration of his case.

The Deputy Commissioner acknowledged this letter on the 8th October, 1952, and stated that an enquiry would be held under section 9 (3) of the Act.

At the enquiry, which was held on the 25th January, 1954, before V. D. Adhihetty, a Deputy Commissioner, the applicant gave evidence substantially confirming his personal history and circumstances as stated in his application. With regard to his visits to India he said that these were not correctly stated in the Superintendent's certificate dated the 18th August, 1951. "The actual visits I paid to India during this period are in June, 1939, May, 1942, and September, 1949. From the time I came to Ceylon in 1939, I have paid 6 visits to India up to date".

As to the remittances to India, his evidence was as follows :—

> "My mother and sister are dependent on me. From 1935 onwards I have been supporting my mother and sister. Before the Exchange Control I used to send Rs. 25 per month for the maintenance of my mother and sister. I applied to the Controller for a permit in December, 1949. The Controller sent me a General Permit to the Superintendent of the estate, and informed me that I had to remit money through the Estate Group Scheme. Under this permit I sent money to India through the Estate Group Scheme from 1950 March about Rs. 50 a month. I had a renewal permit from 7th April, 1951, authorising me to send Rs. 70 a month. Under this permit I sent three sums of Rs. 70 a month in May, 1951, June, 1951, and in July, 1951. I signed 'B' Forms under the Estate Group Scheme for the various sums I had remitted to India since 1950 through the Estate Group Scheme, and for each remittance I perfected a 'B' Form wherein I made a declaration that I was temporarily resident in Ceylon. I ceased sending money from July, 1951, when I came to know definitely that

remitting money will affect my Citizenship rights through the Estate Group Scheme. It is a fact that I declared myself temporarily resident in Ceylon for the purpose of remitting money to India."

At the end of the enquiry the Deputy Commissioner made an order refusing the application, upon grounds which will be considered later, and the applicant appealed to the Supreme Court of Ceylon. The appeal was first argued before Fernando, A.J., and that learned Judge on the 6th August, 1954, reserved the case for the decision of two or more judges as the Chief Justice should determine.

On the 7th and 8th February, 1955, the appeal was heard by a bench consisting of Gratiaen, J., and Sansoni, J.

On the 18th February, 1955, the Court delivered judgment allowing the appeal with costs and directing the Commissioner to take the appropriate steps under the Act on the basis that a *prima facie* case for registration had been established.

The learned Judges in giving their judgment said :—

"The main provisions of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949 (hereinafter called 'the Act'), must now be examined with special reference to the qualifications prescribed for acquiring citizenship by registration. Bearing in mind the legislative plan as a whole, we conclude generally that the intention was to admit any Indian or Pakistani residing in Ceylon to the privilege of Ceylon citizenship (if claimed within a stipulated period of time) provided that he satisfied certain tests prescribed by statute for establishing that his association with the Island could not (or could not longer) be objected to as possessing a migratory or casual character.

"The main question before us relates to the meaning of the words 'permanently settled in Ceylon' in Section 22 of the Act (as amended by Section 4 of Act No. 37 of 1950) which defines an 'Indian or Pakistani resident'."

After reading section 22 and dealing with an argument—not relied upon before the Board—as to the effect of the word "emigrate" in that section, the learned Judges continued :—

"Section 6 (1), read with Section 22, directly raises the question whether an applicant is 'permanently settled in Ceylon'. We therefore propose to postpone our discussion of Section 6 (1) until we have first examined the other special qualifications and conditions for registration prescribed by the Act :

(1) the applicant must possess a minimum qualification of 'uninterrupted residence' as defined in Section 3 ;

(2) his wife (if he is married) and his minor dependent children (if any) must also possess certain residential qualifications—Section 6 (2) (ii) in its recently amended form ;

(3) he must establish a reasonable degree of financial stability—Section (6) (2) (i) ;

(4) he must be free from any disability or incapacity of the kind referred to in Section 6 (2) (*iii*) ;

(5) he must 'clearly understand' the statutory consequence of registration—Section 6 (2) (iv).

One observes in all these requirements an underlying decision to deny Ceylon citizenship to non-nationals whom Parliament for one reason or another would consider unsuitable for that privilege. Hence the insistence on the long and 'uninterrupted' residence of the applicant himself and on the residential qualifications of his immediate family (if any) regarded as a unit ; and the further safeguard that his prospects of useful citizenship were not likely to be endangered by poverty or other handicaps. Each of these requirements, if satisfied, would guarantee a more enduring quality to the tie between the new citizen and the country which he has elected to adopt, 'for better, for worse', as his own."

Later, the learned Judges observed :

"An Indian or a Pakistani residing in Ceylon is in our opinion entitled as of right to exercise the privilege of being registered as a citizen of Ceylon if at the time of his application (made within the requisite period of time)

(1) he and his family (if any) possess the residential qualifications respectively prescribed for them by the Act, and he demonstrates his intention to settle permanently in Ceylon by electing irrevocably to apply for registration ; and

(2) he satisfies all the other relevant conditions laid down in Section 6 (2) of the Act ; and

(3) the requirement as to 'origin' in paragraph (*a*) of the words of the definition is satisfied, or he is at least a descendant of a person whose origin was as aforesaid."

Their Lordships agree with the passages just quoted, subject to one qualification. They think that the Supreme Court has gone too far in using the words "entitled as of right". Section 6 (1) of the Act, read with Section 22, places upon the applicant for registration the burden of proving that he has "permanently settled in Ceylon", and "in addition", of proving the matters set out in Section 6 (2). In order to discharge this burden of proof he must supply evidence that at the time of his application he has the intention of settling permanently in Ceylon. It would appear from the passage just quoted that in the opinion of the Supreme Court an applicant provides *conclusive* evidence of this intention if, having satisfied all the other conditions laid down in the Act, he "demonstrates" it by electing irrevocably to apply for registration. Their Lordships would agree at once that this election, combined with the long and continuous residence in Ceylon which the Act prescribes, and supported as it must be by an affidavit, affords strong evidence that an applicant has permanently settled in Ceylon. The decision to apply for citizenship is one of great importance, especially as it would appear to preclude the applicant from ever thereafter

obtaining Indian citizenship—(see Section 5 (3) of the Indian Citizenship Act, 1955, and compare Section 11 of that Act), and the Commissioner should certainly attach great weight to the fact that the applicant has satisfied the conditions set out in paragraphs (1), (2) and (3) in the passage just quoted from the judgment. This fact, taken by itself, is sufficient in their Lordships' opinion to discharge the initial burden of proof which lies upon the applicant and to establish a *prima facie* case for registration as a citizen of Ceylon; but they cannot find that this fact precludes the Commissioner from coming to a decision, after considering all relevant matters, that at the time of his application the applicant had not a genuine intention to settle permanently in Ceylon.

Their Lordships are, however, of opinion that the Supreme Court was clearly right in allowing the appeal of the applicant from the decision of the Deputy Commissioner.

It is plain, from the notice of 9th September, 1952, already quoted, and from the terms of the Order of 25th January, 1954, that the Deputy Commissioner based his refusal of the application entirely upon his view that the applicant had failed to prove that he had permanently settled in Ceylon. In their Lordships' view the approach of the Deputy Commissioner to the determination of this question was wrong in two important respects.

First, he said in the course of his Order—

> "Applicant's domicile of origin is clearly India and there is a presumption that this domicile continues, unless the applicant has adopted a Ceylon domicile of choice, that is, in other words, he had permanently settled in Ceylon. The burden of proof that he had changed his Indian domicile or, in other words, that he had permanently settled in Ceylon as required by section 6 read with section 22 of the Act, lies on him."

Their Lordships do not regard the question of proving a "change of domicile" as coming into the matter at all. The burden of proving a change of domicile is indeed a heavy one, as is illustrated by the case of *Winans v. Attorney General*[1] and many other cases. The Act has made no reference to domicile, but has placed upon the applicant the burden of proving that at the time of his application he had an intention to settle permanently in Ceylon. Their Lordships have already expressed their view as to the manner in which that burden of proof can be discharged. They think it likely that the legislature deliberately refrained from any reference to change of domicile, in order to free the Commissioner or Deputy Commissioner (who may not be a lawyer) from the responsibility of investigating a question which, as the Judges of the Supreme Court observed "in most cases would present formidable obstacles even to an experienced Judge trained in the law".

Secondly, the Deputy Commissioner concluded his Order by saying :—

> "the applicant has admitted that he has made several remittances to India from March, 1950, to July, 1951, through the Estate Group Scheme by perfecting 'B' forms wherein he declared that he was

[1] [1904] *A. C. 287.*

temporarily resident in Ceylon. The applicant is an educated man and he knew the implications of declaring that he was temporarily resident in Ceylon. There is clear evidence that the presumption referred to above has not been rebutted. On his own admission he was temporarily resident in Ceylon at the date of his application. The application is therefore refused."

In *Ross v. Ross*[1] Lord Buckmaster observed "declarations as to intention are rightly regarded in determining the question of a change of domicile, but they must be examined by considering the person to whom, the purposes for which and the circumstances in which they are made, and they must further be fortified and carried into effect by conduct and action consistent with the declared expression".

In the present case the purpose for which the applicant signed Form "B" is beyond doubt. His mother and crippled sisters were resident in India and dependent on him. He found that under the Estate Group Scheme there would be difficulties in sending remittances to these relatives if he stated in Form "B" that he was permanently resident in Ceylon. Therefore, to quote his evidence "for each remittance I perfected a 'B' Form wherein I made a declaration that I was temporarily resident in Ceylon . . . it is a fact that I declared myself temporarily resident in Ceylon for the purpose of remitting money to India."

In their Lordships' view documents signed in these circumstances and for this purpose were of little evidential value for the purpose of determining the question before the Deputy Commissioner, especially as they were not "fortified and carried into effect by conduct and action consistent with the declared expression". Apart from the signature of the "B" Forms no action of the applicant indicated that his residence in Ceylon was of a temporary nature. On the contrary, his conduct throughout pointed strongly to an intention to settle permanently in that country. In these circumstances the Deputy Commissioner was not justified in treating the statement made on the "B" Forms as a sufficient ground for refusing the application. Their Lordships agree with the realistic view taken in similar circumstances by Nagalingam, A.C.J., in the case of *Thomas v. The Commissioner for Registration of Indian and Pakistani Residents*[2].

For these reasons the decision of the Deputy Commissioner cannot stand, and the order made by the Supreme Court should be upheld.

Their Lordships now turn to the preliminary objection to their jurisdiction, already mentioned. This objection was based on the Appeals (Privy Council) Ordinance of Ceylon (Cap. 85, Vol. II, Legislative Enactments of Ceylon, p. 420), hereafter referred to as "The Appeals Ordinance", the relevant parts whereof are the following:—

"3. From and after the commencement of this Ordinance the right of parties to civil suits or actions in the Supreme Court to appeal to His Majesty in Council against the judgments and orders of such Court shall be subject to and regulated by—

(*a*) the limitations and conditions prescribed by the Rules set out in the Schedule, or by such other Rules as may from time to time be made by His Majesty in Council; and

[1] *[1930] A. C. 1 at page 6.* [2] *(1953) 55 N. L. R. 40.*

(*b*) such general Rules and Orders of Court as the Judges of the Supreme Court may from time to time make in exercise of any power conferred upon them by any enactment for the time being in force."

and

"Rule 1. Subject to the provisions of these rules, an appeal shall lie—

(*a*) as of right, from any final judgment of the Court, 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

(*b*) at the discretion of the Court, from any other judgment of the Court, whether final or interlocutory, if, 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".

The Supreme Court granted leave to appeal to the Privy Council on the ground that its decision involved a question of "great general or public importance" within the meaning of Rule 1 (*b*). It was conceded before the Supreme Court by the respondent that a question of "great general or public importance" was involved, but it was argued that no appeal lay from its judgment, on the ground that an appeal to the Supreme Court under section 15 of the Indian and Pakistani Residents Citizenship Act was not a "civil suit or action in the Supreme Court" within the meaning of section 3 of the Appeals Ordinance. The Supreme Court did not accept this argument. The learned Chief Justice referred to two conflicting lines of decision and allowed the application with some hesitation, observing that "the question that arises for decision is admittedly one which by reason of its great importance should be submitted to Her Majesty in Council for decision". Mr. Justice Gratiaen said that "it may be conceded that the proceedings" before the Deputy Commissioner "did not at that stage constitute a 'civil suit or action'" but "had no hesitation in reaching the conclusion that the parties to the appeal were parties to a 'civil suit or action in the Supreme Court'."

It was argued before their Lordships that the learned Judges of the Supreme Court were wrong, that they had not power to grant leave to appeal, and that consequently their Lordships had no jurisdiction to hear the appeal, unless and until an application to Her Majesty for special leave to appeal was successfully made. It is thus necessary to examine whether the proceedings before the Supreme Court were a "civil suit or action" within the meaning of section 3. There has been a conflict of authority in Ceylon upon the point.

The words "civil suit or action" first occur in section 52 of the Charter of 1833, which conferred on the subject a right to appeal to the Sovereign. It is in the following terms:

> "52. And We do further grant, ordain, direct, and appoint that it shall be lawful for any person or persons being a party or parties to any civil suit or action depending in the said Supreme Court to appeal to Us, Our heirs, and successors in Our or Their Privy Council against any final judgment, decree, or sentence, or against any rule or order made in any such civil suit or action, and having the effect of a final or definitive sentence, and which appeals shall be made subject to the rules and limitations following."

There follow a number of rules and limitations designed among other things to exclude cases considered of insufficient importance to be the subject-matter of an appeal to the Privy Council. It is to be observed that the section enabled a person, subject to these rules and limitations, to appeal as of right to the Sovereign. Section 53, which their Lordships think unnecessary to set out here, preserved intact the right of the Sovereign to admit appeals from the subject even where the subject could not appeal as of right.

It was argued before the Supreme Court and their Lordships that a civil suit or action means a proceeding in which one party sues for or claims something from another. No doubt the words are properly applicable to such cases and they are the cases to which the words are most frequently applied. But it is necessary to enquire whether the application of the words as they appear in section 52 of the Charter must be limited to such cases. Their Lordships would make the general observation that section 52 of the Charter was granting to a subject labouring under a sense of grievance the fundamental right of appealing to the Sovereign and that, though it would be natural to exclude from the range of permissible appeals cases of insufficient importance, it would be difficult to imagine an intention to exclude cases differentiated by reference to the form of the proceedings, regardless of the gravity of the result occasioned by them. And as section 3 of the Appeals Ordinance sets out the manner in which "the right of parties to civil suits or actions in the Supreme Court to appeal to His Majesty in Council" is to be regulated, their Lordships do not doubt that the words "civil suits or actions" must be given the meaning which they bore in the Charter of 1833.

The meaning of the words "civil cause" was considered by the Board in the case of *Commissioner of Stamps, Straits Settlements v. Oei Tjong Swan*[1]. The Commissioner of Stamps, under an ordinance of the Straits Settlements, had certified the amount of duty payable on the estate of a deceased person. The executor of the deceased appealed to the Supreme Court against the Commissioner's decision and succeeded. An appeal by the Commissioner to the Court of Appeal was dismissed. The Commissioner applied to the Court of Appeal for leave to appeal

[1] [1933] *A. C. 378.*

to His Majesty in Council but leave was refused on the ground that it was not competent to that Court to grant leave. Their Lordships' Board held that this last decision was wrong, and that under the law of the Straits Settlements it was competent for the Court of Appeal to grant leave to appeal. In arriving at a decision the Colonial Charter of 1855 came under their Lordships' consideration. Section 58 is to the following effect:

> "58. And we do hereby further ordain, that if that East-India Company or any person or persons, shall find him, her, or themselves aggrieved by any judgment, decree, order, or rule of the Court of Judicature of Prince of Wales' Island, Singapore, and Malacca, in any case whatsoever, it shall be lawful for him, her, or them to appeal to us, our heirs, or successors, in our Privy Council, in such manner, and under such restrictions and qualifications, as are hereinafter mentioned: that is to say, in all judgments, decrees, or determinations made by the said Court of Judicature in any civil cause, the party or parties against whom or to whose immediate prejudice the said judgment, decree, or determination shall be or tend, may by his or their petition, to be preferred for that purpose to the said Court, pray leave to appeal to us, our heirs or successors, in our Privy Council, stating in such petition the cause or causes of appeal;"

then follow some provisions as to stay of execution and security for costs; and finally, upon such provisions being satisfied, the "party or parties so thinking him, her or themselves to be aggrieved shall be at liberty to prefer and prosecute" the appeal.

Lord Macmillan delivering the judgment of the Board said,

> "It is true that the Ordinance in s. 80 which deals with appeals from decisions of the Commissioner does not confer a right of appeal to His Majesty in Council. But the Colonial Charter of 1855 provides for leave to appeal being granted by the Court of the Colony from 'all judgments, decrees or determinations made by the said Court of Judicature in any civil cause'. And s. 1154 of the Civil Procedure Code, provides that subject to certain conditions 'an appeal shall lie from the Court of Appeal to His Majesty in Council (*a*) from any final judgment or order'. Wider language it would be difficult to imagine. Their Lordships do not think it necessary to repeat the reasons adduced by the Chief Justice against excluding the decision of the Appeal Court in the present instance from the scope of these provisions and content themselves with expressing their agreement. The decision against which the Commissioner sought to obtain leave to appeal was in their Lordships' view not a mere award of an administrative character but a judgment or determination made by the Court in a civil cause within the meaning of the Charter and a final judgment or order within the meaning of s. 1154 of the Civil Procedure Code, and as such the Court could competently have granted leave to appeal from it to His Majesty in Council."

Their Lordships interpret the words "wider language it would be difficult to imagine" as applying both to the Charter of 1855 and to section 1154 of the Civil Procedure Code.

The Board was then considering the words "civil cause", but their Lordships see no good ground for drawing any distinction between these words and "civil action". They agree with the observations just quoted, and they see no good ground for distinguishing the present case from the case just cited. They propose to follow that case, although the decision was arrived at without the assistance of argument by counsel, and to hold that the Supreme Court had power to grant leave to appeal in the present case. The preliminary objection therefore fails.

Reference was made in the course of the argument to the definition of the word "action" in the Courts Ordinance (Cap. 6, Legislative Enactments of Ceylon, Vol. I, p. 25), and in the Civil Procedure Code (Cap. 86, Legislative Enactments of Ceylon, Vol. II, p. 428), both of which are earlier in date than the Appeals Ordinance. In each of these earlier Ordinances "action" is defined to mean "a proceeding for the prevention or redress of a wrong". It was argued that the order of the Deputy Commissioner could not be said to be a wrong in the sense that a tort or a breach of contract can be said to be a wrong, as there was nothing illegal in the action of the Deputy Commissioner. On the other hand it was argued that the word "wrong" in the definition has a wider connotation and would include the consequence of an order made by a Commissioner which is wrong though legally made. It is not necessary for their Lordships to decide the point. The Charter was granted long before the two Ordinances mentioned were enacted and, as their Lordships have already pointed out, the words "civil suits or actions" in the Privy Council Appeals Ordinance must bear the same meaning as they bore in the Charter.

In addition to the definition of "action" (contained in section 5) mentioned above the Civil Procedure Code contains the following in section 6:

> "6. Every application to a court for relief or remedy through the exercise of the court's power or authority, or otherwise to invite its interference, constitutes an action".

This is what their Lordships think is the meaning of "action" in the Charter and in the Appeals Ordinance though, as will have been seen, they do not found their decision on this section.

After the application for leave to appeal to the Privy Council had been granted in the present case a bench of five judges (one of whom dissented) in the case of *Silverline Bus Co. Ltd. v. Kandy Omnibus Co. Ltd.*,[1] after a very full and careful review of two conflicting lines of authority, decided that an application to the Supreme Court for a writ of *certiorari* was not a "civil suit or action" within the meaning of section 3 of the Appeals Ordinance. Counsel for the Commissioner in the present case did not contend that the decision in the *Silverline*

[1] *(1956) 58 N. L. R. 193.*

case was wrong : the point actually decided is not before their Lordships, and they have heard no argument upon it. It follows, however, from the views which they have already expressed that they cannot accept the view of Basnayake, C.J., that the words " civil suit or action " in section 3 of tho Appeals Ordinance should be limited to " a proceeding in which one party sues for or claims something from another in regular civil proceedings ".

Their Lordships will humbly advise Her Majesty that this appeal should be dismissed. The appellant must pay the respondent's costs of this appeal.

Appeal dismissed.