

1944

*Present: Keuneman J.*DE FONSEKA, Appellant, and THE CHARTERED
BANK *et al.*, Respondents.

64—D. C. Colombo, 54,335.

Privy Council appeal—Application for extension of time for filing list of documents for service on respondent—Privy Council Appeals (Orders), rules 10 and 18.

Where a part of the record containing documents needed for the preparation of the list of documents required to be served on the respondent under Rule 10 of the Privy Council Appeals (Orders) was missing from the Supreme Court Registry during the period prescribed for service,—

Held, that an application for extension of time should be granted under rule 18.

THIS was an application for extension of time for filing list of documents to be copied for transmission to the Privy Council.

A. R. H. Canekeratne, K.C. (with him *G. P. J. Kurukulasuriya* and *Dodwell Gunawardana*), for the appellant.

H. V. Perera, K.C. (with him *N. K. Choksy*), for the respondents.

June 12, 1944. KEUNEMAN J.—

In this case final leave to appeal to the Privy Council was granted on May 3, 1944. Leave to appeal was granted in only one of several matters which have been decided by the Supreme Court. These matters appear

to have had some relation to each other. The Supreme Court only allowed the right to appeal in respect of Appeal No. 64 and pointed out that no leave was asked for in respect of two appeals and that leave was not granted in respect of another appeal.

In connection with these various appeals in the same case a large number of documents had been put in—in fact there appear to have been four volumes of documents themselves.

Under rule 10 of the Privy Council Appeals (Orders) made by the Supreme Court the appellant had to serve the respondents with a list of all the documents he considered necessary within ten days after obtaining final leave to appeal. On the facts explained to me, up to the 13th May when the ten days expired, the appellant and his legal representative had been busy preparing this list of documents from copies of documents which they had themselves. On May 13th the Supreme Court Registry was inspected, and it was discovered that Volume 4 of the documents was not available there. I think it must be acknowledged that some of the documents which appear to be needed in this case are to be found in Volume 4. Inquiries were made in the District Court thereafter on May 15 and at first the record was not found there. Eventually after visits both to the District Court and the Supreme Court Registry on May 19 the District Court found the record and sent it on to the Supreme Court Registry. On that day verification of the documents needed went on and eventually by about May 24 copies in sufficient numbers were available for 27 respondents and were sent to various parties. Obviously this was done after the ten days had expired.

It is open to the Court under the Privy Council Appeals (Orders) to extend the time under section 18 for good cause, notwithstanding that the time had already expired. I think the absence of Volume 4 from the Supreme Court Registry should be regarded as good cause. It has been suggested that there was not sufficient diligence between May 3 and 13 but I cannot say that I am myself satisfied that there had been none, and had the Supreme Court Registry obtained Volume 4 of the documents, it is possible at any rate that they might have been verified and notice served on that very day. However, it is a vital fact which is not denied that this important volume was certainly absent till about May 19 which was after the time had expired. Certainly the appellant would have been well advised to come earlier to this Court and applied for an extension of time but I do not think I ought to refuse him the enlargement of time merely upon this ground.

In all the circumstances, I allow an extension of time for serving the respondent with a list of documents which are necessary for this case up to one week from today.

In all the circumstances, I make no order of costs with regard to this application.

I may add that no further extension of time will be allowed beyond this one week.

Application allowed.