[IN THE PRIVY COUNCIL]

1950 *Present :* **Lord Porter, Lord Oaksey, Lord Radcliffe, Sir John Beaumont and Sir Lionel Leach**

# THE KING *v.* DHARMASENA

*Privy Council Appeal No. 34 of 1949*

*C. C. A. Appeals 10-11 of 1949*

*Privy Council—Criminal Procedure Code—Sections 167 (4), 180, 184—Joinder of charges and accused persons—Applicability of sections 180 and 184—Crucial time is time of accusation and not of conclusion of trial—Indictment—Significance of section 167 (4)—Conspiracy—Penal Code, section 113B—Two accused—One alone cannot be convicted—Quashing of a conviction—Its effect—Court of Criminal Appeal Ordinance, No. 23 of 1938—Section 5 (2)—Proviso to section 5 (1)—Miscarriage of justice—Guiding rule—Privy Council—Principles for interference in a criminal case.*

(i) In regard to joinder of charges and of accused persons as provided by sections 180 and 184 of the Criminal Procedure Code, the time at which it falls to be determined whether the condition that the offences alleged had been committed in the course of the same transaction has been fulfilled is the time when the accusation is made and not when the trial is concluded and the result known.

(ii) Where an indictment charged an accused person with committing murder in the course of a conspiracy, but referred to section 296 alone of the Penal Code and contained no reference to section 113B—

*Held*, that the accused could be convicted of murder even though there was no proof of conspiracy. *Vide* section 167 (4) of the Criminal Procedure Code.

(iii) A quashed conviction in section 5 (2) of the Court of Criminal Appeal Ordinance, No. 23 of 1938, does not acquit the appellant of the crime charged. It merely makes the previous conviction abortive. If it is intended to direct a judgment of acquittal to be entered it must be done in terms. If this step is not taken, a new trial may be ordered though the conviction has been quashed.

(iv) If two persons are accused of a criminal conspiracy and convicted and on appeal one is sent for retrial, the other should be sent at the same time for retrial also upon that charge so that both may be convicted or acquitted together.

(v) The proper test to determine whether there has been no substantial miscarriage of justice within the meaning of the proviso to section 5 (1) of the Court of Criminal Appeal Ordinance is whether a reasonable jury, after being properly directed, would, on the evidence properly admissible, without doubt convict.

(vi) In an appeal to His Majesty in Council in a criminal case the appellant must establish that there is something which, in the particular case, deprives him of the substance of fair trial and the protection of the law, or which, in general, tends to divert the due and orderly administration of the law into a new course, which may be drawn into an evil precedent in future. Misdirection, as such, even irregularity, as such, will not suffice.



1——J. N. A 99739-1,049 (8/50)

APPEAL, by special leave, from a judgment of the Court of Criminal Appeal. The judgment of the Court of Criminal Appeal is reported in (*1949*) *50 N. L. R. 505.*

*Granville Sharp*, *K.C.*, with *Dingle Foot*, for the accused appellant.

*Frank Gahan*, with *J. G. Le Quesne*, for the Crown.

In the application for special leave to appeal—

*A. B. Perera*, for the petitioner.

*J. G. Le Quesne*, for the Crown.

June 14, 1950. [*Delivered by* LORD PORTER]—

This is an appeal, by special leave, from a judgment of the Court of Criminal Appeal of Ceylon, dated the 16th March, 1949, dismissing the appellant's appeal against this conviction on the 3rd February, 1949, at the Sessions of the Supreme Court of Ceylon sitting at Colombo, on two charges, viz., conspiracy to commit murder and murder.

The appellant was charged and tried together with one Beatrice Maude de Silva Seneviratne upon an indictment dated the 18th June, 1948, containing three counts in the following terms :—

(1) That between the 1st and 8th day of November, 1947, at Nugegoda and Kotahena in the district of Colombo, you did agree to commit or act together with a common purpose for or in committing an offence to wit the murder of one Govipolagodage Dionysius de Silva Seneviratne of No. 107, College Street, Kotahena, and that you have thereby committed the offence of conspiracy to commit murder in consequence of which conspiracy the said offence of murder was committed; and that you have thereby committed an offence punishable under section 113B read with sections 296 and 102 of the Penal Code.

(2) That on or about 7th November, 1947, at Kotahena in the district of Colombo, and in the course of the same transaction as set out in Count (1) above, you Kannangara Aratchige Dharmasena *alias* Baas did commit murder by causing the death of the said Govipolagodage Dionysius de Silva Seneviratne; and that you have thereby committed an offence punishable under section 296 of the Penal Code.

(3) That between the dates mentioned in Count (1) above, you Beatrice Maude de Silva Seneviratne did abet the said Kannangara Aratchige Dharmasena *alias* Baas, the first accused, in the commission of the offence set out in Count (2) above which said offence was committed in consequence of such abetment and that you have thereby committed an offence punishable under section 296 read with section 102 of the Penal Code.

Govipolagodage Dionysius de Silva Seneviratne who undoubtedly was murdered by some one was the husband of the second accused.

Before the trial opened, counsel for each of the accused made an application that their respective clients should be tried separately, claiming that they would be seriously prejudiced if tried together. The application, however, was refused.

As a result of this refusal the two accused persons were tried together both upon the count for conspiracy and upon the two separate individual counts.

The justification for this action is to be found in sections 180 and 184 of the Criminal Procedure Code of Ceylon. Their terms are as follows :—

"Section 180. (1) If in one series of acts so connected together as to form the same transaction more offences than one are committed by the same person he may be charged with and tried at one trial for every such offence, and in trials before the Supreme Court or a District Court such charges may be included in one and the same indictment.

(2) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished the person accused of them may be charged with and tried at one trial for each of such offences, and in trials before the Supreme Court or a District Court such charges may be included in one and the same indictment.

(3) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence the person accused of them may be charged with and tried at one trial for the offence constituted by such acts when combined and for any offence constituted by any one or more of such acts, and in trials before the Supreme Court or a District Court such charges may be included in one and the same indictment.

(4) Nothing contained in this section shall affect section 67 of the Penal Code."

"Section 184. When more persons than one are accused of jointly committing the same offence or of different offences committed in the same transaction or when one person is accused of committing any offence and another of abetment of or attempt to commit such offence, they may be charged and tried together or separately as the court thinks fit; and the provisions contained in the former part of this Chapter shall apply to all such charges."

It was at one time contended on behalf of the appellant that the refusal by the learned judge to separate the trials of the two accused was erroneous in law, gravely prejudicial to the appellant and amounted to a substantial miscarriage of justice. It was, however, afterwards conceded that this contention could not prevail in face of the decision in *Babulal Choukhani v. The King-Emperor*[1] where their Lordships held that the time at which it falls to be determined whether the conditions that the

[1] *L. R. 65 I.A. 168.*

offences alleged had been committed in the course of the same transaction has been fulfilled so as to enable persons accused of different offences to be charged and tried together as provided by section 239 of the Indian Code of Criminal Procedure (which is identical with section 184 of the Ceylon Act) is the time when the accusation is made and not when the trial is concluded and the result known. The charges, it was held, have to be framed for better or worse at an early stage of the proceedings and would be paradoxical if it could not be determined until the end of the trial whether it was legal or illegal. It was for the judge bearing these considerations in mind to use his discretion.

In the light of this decision the appellant's advisers were plainly right in not persisting in the contention that the two accused were improperly tried together on the three charges framed.

It was however further urged that the indictment in fact charged only the crime of conspiracy and merely added murder as part of the conspiracy but not as a separate charge.

This result was said to follow from the insertion in Count (2) of the words " in the course of the same transaction as set out in Count (1) ". Their Lordships do not find themselves able to accept this view. In their opinion the addition of these words does not limit the charge preferred to an allegation of conspiracy only ; they are necessary in order to show that the three offences alleged were committed in the course of the same transaction. Nevertheless they still leave a separate and independent charge of murder by the appellant. This view is supported by a reference to section 167 (4) of the Code which enacts that " The law and section of the law under which the offence said to have been committed is punishable shall be mentioned in the charge." If then Count (2) charged or intended to charge conspiracy it must needs contain a reference to section 113B of the Penal Code whereas section 296 which prescribes the punishment for murder is alone referred to. So far, therefore, as this technical objection is concerned their Lordships reject the appellant's argument.

The trial took place before a judge and jury. In his summing-up the learned judge directed the jury upon the charges of conspiracy and of murder but told them that the accusation of abetment was so involved with that of conspiracy that unless they found the conspiracy proved they should acquit Mrs. Seneviratne of abetment also. The jury in their verdict found both the accused guilty of conspiracy to murder and the appellant guilty of murder but in accordance with the judge's direction made no finding as to abetment and that charge may now be disregarded.

From this finding both appealed to the Court of Criminal Appeal and that court quashed the conviction of Mrs. Senoviratne and granted a new trial in her case under the power contained in section 5 (2) of the Criminal Appeal Ordinance of Ceylon, No. 23 of 1938. The exact method to be adopted in exercising the power given in this section is not very clear but it seems that the correct procedure under the Ordinance is to quash the conviction. A quashed conviction however does not acquit the appellant of the crime charged. It merely makes the previous conviction abortive. If it is intended to direct a judgment of acquittal to be entered

it must be done in terms. If this step is not taken, a new trial may be ordered though the conviction has been quashed, as has been done in this case.

Whilst the Court of Criminal Appeal so treated the case of Mrs. Seneviratne, they dismissed both appeals by the appellant saying that even without the evidence of one witness, viz., Alice Nona, whose testimony will be referred to later, there was ample evidence to establish the guilt of the appellant.

As a result of the order of the Court of Criminal Appeal Mrs. Seneviratne was retried and at the second trial Alice Nona, who was an important if not vital witness for the prosecution, proved so unreliable that the jury stopped the case on the invitation of the learned judge who tried it and found the accused woman not guilty. After this verdict the position was that of two conspirators one had been found guilty by one jury and the other acquitted by another.

In their Lordships' opinion this is an impossible result where conspiracy is concerned. It is well-established law that if two persons are accused of conspiracy and one is acquitted the other must also escape condemnation. Two at least are required to commit the crime of conspiracy; one alone cannot do so. In the present case the only conspirators suggested were the two accused persons and there were no others known or unknown who might have participated in the crime. It is true that one conspirator may be tried and convicted in the absence of his companions in crime, *R. v. Ahearne* [1], but where two have been tried together so that the only possible verdict is either that both are or neither is guilty, an order for the retrial of one makes it imperative that the other should also be retried. In their Lordships' opinion therefore if two persons are accused of a criminal conspiracy and convicted and on appeal one can be and is sent for retrial, the other should be sent at the same time for retrial also upon that charge so that both may be convicted or acquitted together. In the present case in as much as Mrs. Seneviratne has been found not guilty of conspiracy, their Lordships think the proper course is to treat her acquittal as a disposal of the charge of conspiracy and as involving the acquittal of the appellant also on that charge. The appeal against conviction on that count should accordingly be allowed.

But though the appellant's conviction on the charge of conspiracy should in their Lordships' view have been quashed together with that of his alleged co-conspirator and though he, like her, should have been sent for re-trial and must now be acquitted, yet there remains the question whether he should also have been acquitted of the charge of murder.

A number of grounds on which it is contended that the appellant suffered a miscarriage of justice have been put forward but in substance they may now be reduced to two: (1) that the jury must have been unduly prejudiced against him by the questions put to the other accused, and (2) that if it had not been so prejudiced the jury might well have acquitted him. Undoubtedly there were irregularities in the trial for

[1] *6 Cox 6.*

conspiracy which the Court of Criminal Appeal in Ceylon held to have been unduly prejudicial to the accused woman. In their judgment they say :—

> " It is, of course, always proper for a Judge—he has the power and it is his duty at times—to put such additional questions to the witnesses as seem to him desirable to elicit the truth. The part which a Judge ought to take while witnesses are giving their evidence must, of course, rest with his discretion. But with the utmost respect to the Judge, it was, I think, unfortunate that he took so large a part in examining the appellant. Though he was endeavouring to ascertain the truth, in the manner which at the moment seemed to him most convenient, there was a tendency to press the appellant on more than one occasion. The importance and power of his office, and the theory and rule requiring impartial conduct on his part, make his slightest action of great weight with the jury. If he takes upon himself the burden of the cross-examination of the accused, when the government is represented by competent counsel, and conducts the examination in a manner hostile to the accused and suggesting that he is satisfied of the guilt of the accused, as some of the questions do, the impression would probably be produced on the minds of the jury that the Judge was of the fixed opinion that the accused was guilty and should be convicted. This would not be fair to the accused, for she is entitled to the benefit of the presumption of innocence by both Judge and jury till her guilt is proved. If the jury is inadvertently led to believe that the Judge does not regard that presumption, they may also disregard it. "

Strictly of course this criticism is concerned with the case against Mrs. Seneviratne alone, but a finding against her in a case of conspiracy is bound to influence to some extent the attitude of the jury towards the appellant.

Moreover the evidence of Alice Nona purported to implicate him as well as her in the alleged conspiracy. Bearing these circumstances in mind their Lordships have to decide whether the appellant's conviction for murder should or should not be affirmed and to determine the principles which should guide their decision. The principles upon which the Board must be guided in reaching a conclusion upon this matter are that they must keep in mind the provisions of section 5 (1) of the Ordinance of 1938 which declares :—

> " The Court of Criminal Appeal on any such appeal against conviction shall allow the appeal if they think that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court before which the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal :
>
> Provided that the court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour

of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred."

and must bear in mind that they are not themselves a Court of Criminal Appeal.

In determining what amounts to a serious miscarriage of justice their Lordships have the guidance of English decisions upon wording which is the same as and is obviously copied from section 4 (1) of the English Act of 1907.

For the present purpose it is enough to refer to *R. v. Haddy*[1] which was approved in the House of Lords in *Stirland v. Director of Public Prosecutions*[2]. Viscount Simon's words in the latter case sum up the matter. He says :—

"Apart altogether from the impeached questions (which the Common Serjeant in his summing-up advised the jury entirely to disregard), there was an overwhelming case proved against the appellant. When the transcript is examined it is evident that no reasonable jury, after a proper summing up, could have failed to convict the appellant on the rest of the evidence to which no objection could be taken. There was, therefore, no miscarriage of justice, and this is the proper test to determine whether the proviso to section 4, sub-section 1 of the Criminal Appeal Act, 1907, should be applied. The passage in *Woolmington v. Director of Public Prosecutions* (*1935*) *A.C. 462, 482, 483* where Viscount Sankey L.C. observed that in that case, if the jury had been properly directed it could not be affirmed that they would have 'inevitably' come to the same conclusion should be understood as applying this test. A perverse jury might conceivably announce a verdict of acquittal in the teeth of all the evidence, but the provision that the Court of Criminal Appeal may dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred in convicting the accused assumes a situation where a reasonable jury, after being properly directed, would, on the evidence properly admissible, without doubt convict. That assumption, as the Court of Criminal Appeal intimated, may be safely made in the present case. The Court of Criminal Appeal has recently in *R. v. Haddy* (*1944*) *1 K. B. 442* correctly interpreted section 4, sub-section 1 of the Criminal Appeal Act and the observation above quoted from *Woolmington's* case in exactly this sense."

What then their Lordships have to determine is whether a reasonable jury properly directed would on the evidence adduced have found the appellant guilty of murder.

That there is ample and more than ample evidence upon which a jury could do so is undoubted.

Some one murdered Govipolagodage Seneviratne in his own house between 9 o'clock and 9.30 on the 7th November, 1947. The post-mortem revealed that he had died as the result of a violent attack with a sharp instrument with which he had been struck with force a number of times and death was due to haemorrhage and shock from multiple incised wounds in the neck.

[1] (*1944*) *1 K. B. 442.* [2] (*1944*) *A. C. 315.*

The evidence against the appellant on this part of the case is perhaps most conveniently set out in tabulated form.

(1) Three witnesses who had ample opportunities of observing him identified him as having been near the spot on the day in question at the time when the murder must have taken place and said that he had come from the back compound of the dead man's house.

(2) According to their evidence he had covered his head with a sarong belonging to the deceased's son and was carrying a handbag and knife. When challenged he threatened one of these witnesses with the knife.

(3) Another of these witnesses tried to stop him but he escaped, dropped the knife and handbag in a rampe bush and throwing off the sarong ran towards Alwis Street. The knife and handbag were afterwards found by the police in this spot.

(4) A fourth witness who was repairing the roof of a house in Alwis Place saw the appellant run under the portico of the house where he was working and force his way through the zinc sheets of a boundary fence. He afterwards found a coat on the ground below the spot at which he was working. This witness like the others identified the appellant at an identification parade held before the learned magistrate. It is true that one witness who said he saw some one running along Alwis Place failed to identify the appellant as the runner but that failure is of little importance in the face of the confident identification of the other four.

(5) The knife, bag, sarong and coat were all imbued with human blood and to the knife human hair of the colour and texture of the dead man was found adhering.

(6) About 3 to 3.30 on the afternoon of the 7th November the appellant came to the shop at Nugegoda which is occupied by a carpenter and by a smith. He brought with him a block of wood, a bolt of iron with a nut underneath and a piece of iron which had been flattened for a knife. He also brought two washers and a nut. He first asked the carpenter to make him a herb cutter which he required that day. The carpenter referred him to the blacksmith who rejected the knife as unsuitable because it was of iron whereas it should have been of steel, and the wood as having marks upon it made by the cutting knife. The blacksmith was unable to finish the work that day, but finished the cutter next morning after fitting to it a fresh knife and a fresh piece of wood. The appellant however had been arrested meanwhile and the knife and its accompaniments were handed over to the police.

The articles from the compound at the deceased's house and the other articles mentioned above were sent to the government analyst and these included the knife recovered from the rampe bush and the bolt which the appellant had brought to the blacksmith's shop. At the trial this witness was asked to re-construct the herb cutter with the knife which had been recovered instead of that made by the blacksmith. According to his evidence the bolt would leave two roughly circular marks on either side of any piece of metal attached to it and the recovered knife had in fact two circular marks, one on each side, which correspond in shape and area to the two marks that would be produced by the inner side of the bolt. From their appearance the inference therefore was justified that

the recovered knife must have been attached to this bolt for some time. The appellant urges in answer that another knife had been found lying on the table on his premises to which the operating knife of a herb cutter would be attached and his wife stated that the knife so found was the only one which they possessed and was that actually in use by the appellant and further that some difficulty was experienced in fixing the knife to the bolt.

The first of these points is disposed of by the evidence of the government analyst who says in terms that that knife could never have been fitted to the herb cutter and the second is only true to the extent that there was a small projection half way down the thread of the bolt which necessitated the use of a little force if the screw was to go beyond it—an eventuality which was by no means certain. But in any case the witness had no doubt that the knife used to kill the deceased fitted into the bolt which the accused took to the blacksmith.

(7) The appellant was examined by a doctor on the day on which the murder was committed and was found to have an oblique incised wound over the inner prominence of his right ankle and an abrasion. These injuries could not have been caused by a dog bite as was suggested on behalf of the appellant or by a knife but were consistent with injuries caused by the appellant drawing his leg upward when passing through a fence constructed of galvanized iron or zinc sheets with sharp edges.

(8) On the morning of the murder the appellant borrowed an umbrella from a neighbour between the hours of 7.30 and 8 a.m. The umbrella was never returned but according to the police evidence an umbrella was found by 1.30 on the day of the murder leaning against the wall near a pool of blood and was identified as his by the neighbour. The only answer made on behalf of the accused was an assertion by his wife that the police had conspired to entrap her husband and in order to bring the conspiracy to a successful conclusion had removed the umbrella from his house when they came to arrest him. The lady's evidence however as to the knife and on other matters as appears below is inconsistent with the established evidence and could not be accepted.

(9) Finally the accused man did not himself give evidence at the trial as to his movements on the day in question though his wife was called on his behalf and testified that with the exception of a brief and immaterial interval he was at home all day. This evidence is not only in conflict with that given by the four witnesses referred to above but also with that of the carpenter and blacksmith who spoke to his having visited them that afternoon.

On this evidence it is plain that there was ample material on which a jury could convict the appellant.

But it is said that as a result of the joint trial of the two accused he was seriously prejudiced in the eyes of the jury by the undue intervention of the learned commissioner in the examination of Mrs. Seneviratne and his dramatic reconstruction of the steps taken which led up to the crime and which the evidence does not warrant. In particular it was pointed out that unless there was a conspiracy, no motive for the murder by the accused of a personal friend had been established; that in the

summing up the presence of the accused on the premises on the fatal day had been assumed; that the evidence of Alice Nona could not be, and at the second trial was not, accepted and that the suggestion that the coat and sandals found on the spot were those of the appellant was unwarranted.

Though, as the Court of Criminal Appeal have found and their Lordships have accepted, there were irregularities in the trial on the conspiracy charge, the summing-up against this prisoner is plainly separated from the joint charge. Moreover though short, it impresses upon the jury the necessity for the prosecution to prove their case. It puts fully and carefully before them the evidence for the appellant and calls their attention to and carefully reiterates his wife's evidence on his behalf.

He had already warned them that Alice Nona might be a conspirator and on this part of the case he places no reliance upon, and indeed does not base any argument upon, her evidence.

So too the coat and sandals are not suggested as incriminating the accused man. It is true that the jury were not warned in terms that without a finding of conspiracy no motive for the crime was proved, but motive is only an element and is not a vital element in the case where the evidence of the commission of the crime is clear. Moreover when dealing with the second count of the indictment, the learned judge nowhere suggests that any motive had been shown to exist; the facts given in evidence alone are relied upon. Furthermore the appeal with which their Lordships are concerned is not brought from the trial by judge and jury alone. Intervening is the judgment of the Court of Criminal Appeal who confirmed the verdict of the jury. "Even without the evidence of Alice Nona", they say "there was ample evidence in the case to establish the guilt of the first accused". With this observation their Lordships agree and notwithstanding such irregularities as occurred in the trial for conspiracy, they are not persuaded that any substantial miscarriage of justice has occurred. Rather they think that a reasonable jury properly directed would have found the appellant guilty of the crime of murder. It may be useful to reiterate what was said as to the functions of the Board and the principles upon which their Lordships act, the language used in *Renouf v. A.G. for Jersey*[1]. The wording is:—

> "It may be useful to repeat that the Board has always treated applications for leave to appeal, and the hearing of criminal appeals so admitted, as being upon the same footing. As Lord Sumner, giving the judgment of the Board in *Ibrahim v. The King* in *1914 A.C. 599* remarked at page 614: 'The Board cannot give leave to appeal where the grounds suggested could not sustain the appeal itself; and, conversely, it cannot allow an appeal on grounds that would not have sufficed for the grant of permission to bring it.' He added, what is material in the present case: 'Misdirection, as such, even irregularity as such, will not suffice. There must be something which, in the particular case, deprives the accused of the substance of fair trial and the protection of the law, or which, in general, tends to divert the due and orderly administration of the law into a new course, which may be drawn into an evil precedent in future.'"

[1] *(1936) A. C. 445 at p. 475.*

Their Lordships may be permitted to say that the appellant's case was argued with great force and ability. Nevertheless they are not persuaded that any ground for interference with the conviction has been established and accordingly they have, as they indicated at the end of the hearing, humbly advised His Majesty that the appeal should be dismissed.

*Appeal dismissed.*

[IN THE PRIVY COUNCIL]

1950 *Present :* **Lord Porter, Lord Oaksey, Lord Radcliffe, Sir John Beaumont and Sir Lionel Leach**

NADARAJAN CHETTIAR, Appellant, *and* TENNEKOON *et al.*, Respondents

*Privy Council Appeal No. 33 of 1949*

*S. C. 445—D. C. Colombo, 12,109*

*Privy Council—Money Lending Ordinance (Cap. 67)—Section 2 (2)—Borrower's right to re-open transaction—Loan already repaid at date of action—Construction of words in a Ceylon enactment—Decision of English Court of Appeal on identical words—Binding in Ceylon.*

A borrower is entitled to relief under section 2 (2) of the Money Lending Ordinance (Cap. 67), in respect of a money-lending transaction, although the loan was repaid and the transaction closed before the date of his application for relief.

It is the duty of courts in Ceylon to follow a decision of the English Court of Appeal on the construction of words identical with those used in a Ceylon Ordinance, unless there are in a particular case local conditions which make it inappropriate.

APPEAL from a decree of the Supreme Court.

*Wilfred A. Barton, K.C.*, with *Frank Gahan*, for defendant appellant.

*R. O. Wilberforce*, for plaintiff respondent.

*Cur. adv. vult.*

June 21, 1950. [*Delivered by* SIR JOHN BEAUMONT]—

This is an appeal from a judgment of the Supreme Court of Ceylon dismissing on February 18, 1948, an appeal from a judgment of the District Court of Colombo dated March 25, 1946.