

1949 Present : Wijeyewardene C.J and Canekeratne J.

ATTORNEY-GENERAL, Petitioner, and VALLIYAMMA
ATCHI, Respondent.

S. C. 318—APPLICATION FOR CONDITIONAL LEAVE TO APPEAL TO
HIS MAJESTY THE KING IN HIS PRIVY COUNCIL IN D. C.
COLOMBO 10 (S. C. 512).

*Privy Council—Appeal by Crown—Security for costs—Crown not bound by
rules—Rule 3 of Schedule to Appeals (Privy Council) Ordinance—
Chapter 85.*

The Crown need not deposit security for costs under rule 3 of the rules
to the schedule of the Privy Council (Appeals) Ordinance.

APPPLICATION for conditional leave to appeal to the Privy Council.

H. W. R. Weerasooriya, Crown Counsel, for the Crown in support.

N. M. de Silva, for the respondent.

Cur. adv. vult.

¹ (1875) L. R. 10 Ch. 239.

² (1865) 11 H. L. C. 558.

³ (1908) 11 N. L. R. 75.

⁴ (1918) 20 N. L. R. 241.

July 20, 1949. WIJYEWARDENE C.J.—

This is an application for leave to appeal to His Majesty in Council from a final judgment of this Court.

Rule 3 of the Rules set out in the Schedule to the Appeals (Privy Council) Ordinance enacts—

“Leave to appeal under Rule 1 shall only be granted by the Court in the first instance—

- (a) upon the condition of the appellant entering into good and sufficient security, to the satisfaction of the Court, in a sum not exceeding Rs. 3,000 for the due prosecution of the appeal and the payment of all such costs as may become payable to the respondent ;
- (b) upon such other conditions”.

It is contended by Mr. Weerasooriya that the Attorney-General who represents the Crown in this case is not bound to give security under that Rule. His statement at the Bar that it has been the practice for the Attorney-General not to give security in such cases has not been canvassed by the Counsel for the respondent. That practice appears to follow naturally from the proposition that the Crown cannot be compelled to pay but makes payment as an act of grace when ordered to do so by any of His Majesty's Courts. I may in this connection refer to the provisions of section 462 of the Civil Procedure Code that “no writ against person or property shall be issued against the Attorney-General in any action brought against the Crown in any case”.

I am of opinion that the provision in Rule 3 (a) requiring the giving of security does not apply in the present case as the Rule does not state expressly that the right of the Crown is affected by it and as it does not appear by necessary implication that the Crown is bound by it (section 3 of the Interpretation Ordinance).

Leave to appeal is granted under Rule 3 but such leave is not subject to the condition in Rule 3 (a).

CANEKERATNE J.—I agree.

Application allowed.