1947 *Present:* **Howard C.J. and Jayetileke J.**

CEYLON INSURANCE CO., LTD., Appellant, *and* UNITED CEYLON INSURANCE CO., LTD., Respondent.

S. C. 221—D. C. Colombo, 128.

Companies Ordinance, No. 51 of 1938—Registration of Names—Ceylon Insurance Company—United Ceylon Insurance Company—Calculated to deceive—Injunction—Section 18 (1) (a).

Plaintiff, the Ceylon Insurance Company, brought an action to restrain the defendant from using the name "United Ceylon Insurance Company" on the ground that it so nearly resembled the name of the plaintiff as to be calculated to deceive.

Held, that the plaintiff had no exclusive right to the use of the word "Insurance" which was merely descriptive of the business carried on by both parties and that the addition of the word "United" sufficiently distinguished the defendant.

APPEAL from a judgment of the District Judge, Colombo.

H. V. Perera, K.C. (with him *E. B. Wikramanayake*), for the plaintiff, appellant.—The plaintiff company carries on business in motor, fire, fidelity and life insurance and was registered as the Ceylon Insurance Company on April 3, 1939. The defendant company carries on business in life insurance and was registered on May 24, 1944, as the United Ceylon Insurance Company. This is an action by the plaintiff company to restrain the defendant company from using the name, style, and title of "United Ceylon Insurance Company."

Under section 18 (1) (*a*) of the Companies Ordinance, No. 51 of 1938, no company shall be registered by a name which (*a*) is identical with that by which a company in existence is registered or (*b*) so nearly resembles that name as to be calculated to deceive. The name is not identical in this case. But there can be no doubt that it nearly so resembles the name of the plaintiff company as to be calculated to deceive. It is in evidence that letters intended for one company have been delivered to the other.

In fact the name is identical but for the addition of the word "United". The word "United" has no special significance at all. The public may well believe that the new company is actually the old company registered in 1939. The question is not whether the plaintiff company has the right to the monopoly of the use of words such as "*Ceylon*" and "*Insurance*" but whether the name used by the defendant company so nearly resembles the name used by the plaintiff company as to be calculated to deceive. When one considers the class of people who have become interested in insurance business during recent years there can be no doubt that a good many persons interested may well mistake one company for the other, or may believe it is one company. This fact is obvious without reference to any authorities at all. But there is ample

authority to support the position that the plaintiff is entitled to the relief he claims. See, for example, *Ouvah Ceylon Estates, Limited v. Uva Ceylon Rubber Estates, Limited* [1]; *Hendriks v. Montague* [2].

N. E. Weerasooria, K.C. (with him *N. K. Choksy, K.C.*, and *B. D. Gandevia*), for the defendant, respondent.—The fact that some letters were misdirected was due to the mistake of the postal authorities. There is no evidence of any actual or possible deception. The mere fact of the liability of misdirection of correspondence does not in itself show an intention to divert business or any probability that business will be diverted. See *Meikle v. Williamson* [3].

The cases cited on behalf of the appellant are not applicable to the facts of the present case. The plaintiff carries on various types of insurance business. The defendant carries on only life insurance business. So that it cannot be said that they both carried on identical business. The field of operation is wide in the present case but was limited in those cases and the addition of the word "United" is sufficient to distinguish the defendant company from the plaintiff company. The finding of the District Judge is correct and is amply supported by authorities. See *Colonial Life Assurance Company v. Home and Colonial Assurance Company, Limited* [4]; *British Vacuum Cleaner Company, Limited v. New Vacuum Cleaner Company, Limited* [5]; *H. E. Randall, Limited v. E. Bradley & Sons* [6]; *Hollandia and Anglo Swiss Condensed Milk Company v. Nestle and Anglo-Swiss Condensed Milk Company* [7].

H. V. Perera, K.C., replied.

Cur. adv. vult.

September 4, 1947. HOWARD C.J.—

This is an appeal by the plaintiff from a judgment of the District Court, Colombo, dismissing the action with costs. The plaintiff and defendant are Insurance Companies. The former carries on business in motor, fire, fidelity and life insurance and was registered on April 3, 1939, as the Ceylon Insurance Company. The defendant company carries on business in life insurance and this company was registered on May 24, 1944, as the United Ceylon Insurance Company. The plaintiff company has brought this action to restrain the defendant company from using the name, style or title of the "United Ceylon Insurance Company" or any other style or name which includes the plaintiff company's name or so nearly resembles the same as to be calculated to induce the belief that the business carried on by the defendant company is the same as the business carried on by the plaintiff company or in any way connected therewith. The District Judge held that the plaintiff company, having no right to the monopoly of either "Ceylon" or "Insurance", could not object to the use of those words by the defendant company provided the latter used some further word or words to distinguish itself from the former. The addition of the word "United" would in the opinion of the District Judge be sufficient to

[1] *(1910) 103 Law Times 416 at 417.*
[2] *L. R. 1881 17 Ch. D. 638 at 648.*
[3] *(1909) 26 R. P. C. 775.*
[4] *10 L. T. 448.*
[5] *(1907) 23 T. L. R. 587.*
[6] *(1907) 24 R. P. C. 773 at 777.*
[7] *(1928) 24 N. L. R. 396 at 404.*

distinguish it from the plaintiff Company. He therefore held that the plaintiff company had failed to make out a case for an injunction and dismissed the action with costs.

In asking for an injunction the plaintiff company maintains that the defendant company has contravened section 18 (1) (*a*) of the Companies Ordinance (No. 51 of 1938). This provision is worded as follows :—

> " 18. (1) No Company shall be registered by a name which—
>
> (*a*) is idential with that by which a Company in existence is already registered, or so nearly resembles that name as to be calculated to deceive, except where the Company in existence is in the course of being dissolved and signifies its consent in such manner as the Registrar requires."

Mr. H. V. Perera contends that the name taken by the defendant company so nearly resembles that of the plaintiff company as to be calculated to deceive. In support of this contention he has cited various cases. The first of these cases is that of *Ouvah Ceylon Estates, Limited v. Uva Ceylon Rubber Estates, Limited*[1]. In this case the Court of Appeal held that the two companies must be viewed as companies carrying on or proposing to carry on identical business and the name which the defendant company proposed to use was substantially identical with that already used by the plaintiff company. This could not be allowed. In his judgment Cozens Hardy M. R., stated that the defendant company had taken the entire name of the plaintiff company and merely added that which is a common ingredient to both companies—namely that they deal in rubber. The Master of the Rolls also adopted certain observations from the judgment in *North Cheshire and Manchester Brewery Company, Limited v. Manchester Brewery Company, Limited*[2]. These observations are as follows :—

> " What appears to me to be perfectly plain is this—that in the meantime the respondent company are exposed to every possible inconvenience which can arise to their trade from the fact of a rival company starting afresh in the same trade in the same locality and under substantially the same name with themselves."

Farwell L.J. in his judgment in the Uva case stated that he was convinced by the use of the words alone that there is a probability of deception and that the doctrine of *res ipsa loquitur* applied. The action being a *quia timet* action there was therefore no question arising on evidence of persons who have or have not been actually deceived. There is in the present case some evidence that letters intended for the defendant company have been received by the plaintiff company. This, however, may indicate either inaccurate recollection of the addresser or official negligence and does not amount to evidence of actual deception which in fact is non-existent. In this connection I would refer to the case of

[1] *(1910) 103 L. T. 416.*

[2] *(1899) A. C. 87.*

Meikle v. Williamson[1] in which it was held that the mere fact of liability to misdirection of correspondence does in itself not show either an intention to divert business or any probability that business will be diverted. In my opinion the grounds on which the Uva case was decided are not present in this case. The business carried on by the two companies is the general one of insurance and not a particular one like the manufacture of rubber. The locality in which the business was carried on in the Uva case was also limited and not general as in the present case. Moreover it is not a case where deception is probable from the words alone. In these circumstances I am of opinion that the case cited is not an authority for the proposition put forward by Mr. Perera.

Mr. Perera also cited the case of *Hendriks v. Montague*[2]. In that case the Universal Life Assurance Society were the plaintiffs and succeeded in obtaining an injunction against the defendants for using the name Universe Life Assurance Association. In this case also the Court of Appeal held that there was such a similarity between the names as that the one is in the ordinary course of human affairs likely to be confounded with the other and that persons who have heard of the Universal were likely to be misled into going to the Universe. I do not consider that persons who have heard of the Ceylon Insurance Company were likely to be misled into going to the United Ceylon Insurance Company.

Our attention has been invited by Counsel to various other cases. In the *Colonial Life Assurance Company v. The Home and Colonial Assurance Company (Limited)*[3] the plaintiffs failed to succeed. In that case the Master of the Rolls held the names used as descriptive only of the character of the business carried on by the parties and no exclusive right to trade under that description could be acquired. He also held that there was really as much difference between the names of the plaintiffs and defendants as there was between the names of many other existing companies. The same principle in regard to the use of descriptive names was formulated in *British Vacuum Cleaner Company (Limited) v. New Vacuum Cleaner Company (Limited)*[4]. So in the present case no exclusive right to the use of the word "Insurance" which is descriptive of the business carried on by both parties could be acquired. In *The London Assurance v. The London and Westminster Assurance Corporation (Limited)*[5] the Vice Chancellor held that in spite of the resemblance between the two titles there was no case for an injunction.

For the reasons I have given I am of opinion that the District Judge came to a correct conclusion and the appeal must be dismissed with costs.

JAYATILEKE J.—I agree.

Appeal dismissed.

[1] *(1909) 26 Reports of Patent Cases 775.*
[2] *17 Ch. D. 638.*
[3] *10 L. T. 448.*
[4] *(1907) 23 T. L. R. 587.*
[5] *(1863) 8 L. T. N. S. 497.*