

1964 Present : Sirimane, J., and Manieavasagar, J.

A. L. B. BRITO MUTUNAYAGAM, Petitioner, and **P. RATNAYAKE**,
Respondent

S. C. 57/64 - Application for Conditional Leave to appeal to the Queen in Council under the Rules set out in the Schedule to the Appeals (Privy Council) Ordinance in S. C. 164 of 1961, D. C. Colombo 16766/N. T.

Privy Council-Conditional leave to appeal-Necessary parties-Application made by one only of two executors-Validity-Appeals (Privy Council) Ordinance (Cap. 100).

It is competent for one of two executors to make an application for conditional leave to appeal to the Privy Council. In such a case, the co-executor need not be joined as a petitioner or be made a party respondent.

APPLICATION for conditional leave to appeal to the Privy Council.

J. W. Subasinghe, for Petitioner. S. Sharvananda, for Respondent.

November 12, 1964. **SIRIMANE, J.-**

This is an application by one of two executors for conditional leave to appeal to the Privy Council from a judgment of this Court.

The co-executor is not a party to the application; the petitioner has in his affidavit stated why the co-executor hadnot joined in the application; the latter is now resident in England and he has in an affidavit (exhibit 'A') authorised the petitioner to act on his behalf, and has acquiesced in the steps taken by the petitioner. .

Counsel for the respondent contends that it is not competent for the petitioner alone to make this application and that the co-executor should have joined the petitioner, or been made a party respondent. We do not agree with this submission. We are of the view that it is competent for one of several executors to make this application. There are no special provisions in the Privy Council Appeals Ordinance (Vol. 4, Cap. 100) as to who should be made parties to an application of this nature. The ordinary rule is that all parties who may be affected by the judgment of the Privy Council should be made parties, but we think this is unnecessary in the case of executors who are sued or sue in their representative capacity, because "executors, however numerous, are regarded in law as an individual and the act of one is deemed to be the act of all " (Williams on Executors, 14th Edn., Vol. I, at page 432). We do not think it necessary to refer to all the authorities cited by counsel for the petitioner where it has been held that one executor can act on behalf of all.

The application for conditional leave to appeal is allowed on the usual conditions.

The petitioner is entitled to costs of this application.

MANICAVASAGAR, J.-I agree.

Application allowed.

- *End* -