

29 1951
No. 33 1950

Supreme Court of Ceylon
No. 376 (Final) of 1947

District Court, Colombo
No. 15925

UNIVERSITY OF LONDON
W.C.1.
10 JUL 1953
INSTITUTE OF ADVANCED
LEGAL STUDIES

IN THE PRIVY COUNCIL
ON AN APPEAL FROM
THE SUPREME COURT OF CEYLON

BETWEEN

L. A. PERERA.....*Plaintiff-Respondent*

AND

THE SRI LANKA OMNIBUS COMPANY LIMITED,
of Norris Road, Colombo.....*Defendant-Appellant.*

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OF PROCEEDINGS

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No.....

Supreme Court of Ceylon
No. 376 (Final) of 1947

District Court, Colombo
No. 15925

IN THE PRIVY COUNCIL
ON AN APPEAL FROM
THE SUPREME COURT OF CEYLON

BETWEEN

L. A. PERERA.....*Plaintiff-Respondent*

AND

THE SRI LANKA OMNIBUS COMPANY LIMITED,
of Norris Road, Colombo.....*Defendant-Appellant.*

RECORD OF PROCEEDINGS

PART I.

No. 1.

Journal Entries

JOURNAL

IN THE DISTRICT COURT OF COLOMBO.

No. 15925.

Value : Rs. 23,000.

L. A. PERERA.....*Plaintiff*

vs.

10 THE SRI LANKA OMNIBUS COMPANY LIMITED

.....*Defendant.*

The 21st day of December, 1944.

Mr. I. A. B. Ihalagama files appointment and plaint.

22-12-44.

Are the offer and acceptance pleaded in paragraphs 3 and 4 in writing.
If so plead same and attach them to the plaint and move.

(Initialled) R. F. D.,
District Judge.

3-1-45.

20 Proctor sees me. Time extended to 22-1.

(Initialled) R. F. DIAS,
District Judge.

8-1-45.

For the reasons stated, Proctor for plaintiff moves that the plaint be
accepted and summons issued on the defendant.

Accept plaint and issue summons for 23-2.

(Signed) R. F. DIAS,
District Judge.

29-1-45.

30 Summons issued on defendant.

23-2-45.

Summons served on Defendant.

Proxy filed.

Answer for 9-3.

(Signed) R. F. DIAS,
District Judge.

No. 1
Journal
Entries
21-12-44 to
30-9-48

No. 1
Journal
Entries
21-12-44 to
30-9-48
continued.

9-3-45.

Mr. D. F. J. Perera for Defendant.

Deficiency Rs. 750.

Answer for 23-3.

(Signed) R. F. DIAS,
District Judge.

EODIE.

Deficiency Rs. 750 tendered.

23-3-45.

Answer filed.

Issue Deposit Order for Rs. 5,100.

Call 2 p.m. to fix date.

(Signed) R. F. DIAS,
District Judge.

10

Trial 6-7.

26-3-45.

Deposit note No. 64682 issued.

28-3-45.

As the trial date fixed by Court is not suitable to plaintiff's counsel, Proctor for plaintiff with the consent of the Proctor for the defendant moves to call it on 27-4-45 to fix another trial Date.

Call 27-4.

(Signed) S. C. SWAN,
District Judge.

27-4-45.

Case called.

Trial refixed for 31-8.

(Signed) S. C. SWAN,
District Judge.

12-5-45.

Kachcheri Receipt S/5 No. 88807 dated 27-3-45 for Rs. 5,100 filed.

30

4-8-45.

Proctor for plaintiff moves that this Court be pleased in terms of section 102 of the Civil Procedure Code to order the defendant to declare by affidavit all documents which are or have been in his possession or power relating to any matter in question in this case.

Proctor for Defendant received notice for 24-8-45.

Call 24-8-45.

(Signed) Illegibly.
District Judge. 40

20-8-45.

Proctor for plaintiff files plaintiff's list of witnesses, documents with notice to the Proctor for the defendant.
Filed.

No. 1
Journal
Entries
21-12-44 to
30-9-48
—continued.

(Signed) W. SANSONI,
District Judge.

21-8-45.

Summons issued on 5 witnesses by plaintiff.

24-8-45.

10 Mr. I. A. B. Ihalagama for plaintiff.
Mr. D. F. J. Perera for Defendant.
Case called.
Affidavit will be filed today.

(Signed) W. SANSONI,
District Judge.

28-8-45.

Proctor for Defendant files affidavit of the Secretary of the Sri Lanka Omnibus Company Limited, Colombo as amended by Court with notice to the Proctor for Defendant and moves to accept the same.

20 File.

(Signed) W. SANSONI,
District Judge.

28-8-45.

Proctor for Defendant files defendant's list of witnesses with notice to Proctor for plaintiff and moves for summons on them.

(Signed) W. SANSONI,
District Judge.

28-8-45.

Proctor for plaintiff files plaintiff's additional list of witnesses and documents with notice to the Proctor for the Defendant.
File.

(Signed) W. SANSONI,
District Judge.

29-8-45.

Summons issued on one witness by plaintiff.

31-8-45.

Case called.
Mr. I. A. B. Ihalagama for plaintiff.
Mr. D. F. J. Perera for defendant.
40 *Vide* proceedings.
Amended Answer 21-9.

(Signed) W. SANSONI,
District Judge.

No. 1
Journal
Entries
21-12-44 to
30-9-48
—continued.

21-9-45.

Mr. D. F. J. Perera for defendant.
Amended Answer filed.
Trial 14-12.

(Signed) S. C. SWAN,
District Judge.

19-10-45.

Proctor for plaintiff moves to make order under section 104 of the Civil Procedure Code for notice to issue to the defendant to produce document referred to in affidavit of 24-8-45 for the inspection of the Proctor for Plaintiff and to permit him to take copies thereof.

Issue notice for 26-10.

(Signed) S. C. SWAN,
District Judge.

26-10-45.

Notice not issued.
Issue now for 9-11.

(Signed) S. C. SANSONI,
District Judge.

26-10-45.

Notice issued on defendant.

20

9-11-45.

Mr. I. A. B. Ihalagama for plaintiff.
Notice to produce documents served on the Defendant Company's Manager.
Complied with.

(Signed) S. C. SANSONI,
District Judge.

24-11-45.

Proctor for plaintiff files additional list of witnesses and documents with notice to Proctor for Defendant.

Re witness number one obtain certified copies subject to this file.

(Signed) C. NAGALINGAM,
District Judge.

27-11-45.

Proctor for plaintiff files additional list of witnesses and documents with notice to proctor for the defendant.

File.

(Signed) C. NAGALINGAM,
District Judge. 40

27-11-45.

Proctor for plaintiff moves to issue summons on the Director of Transport and the Commissioner of Motor Transport Colombo to produce or cause to be produced the documents mentioned in the motion as they are material for this case. No. 1
Journal
Entries
21-12-44 to
30-9-48
—continued.

Move with proper notice to the other side.

(Signed) C. NAGALINGAM,
District Judge.

1-12-45.

10 Summons issued on 8 witnesses by plaintiff.

14-12-45.

Trial.

Mr. I. A. B. Ihalagama for plaintiff.

Mr. D. F. J. Perera for defendant.

Trial postponed for 12 and 15-4.

Judicial conference in progress today.

(Signed) S. C. SWAN,
District Judge.

1-2-46.

20 Mr. I. A. B. Ihalagama for plaintiff.

Mr. D. F. J. Perera for defendant.

Case called to refix date of trial.

Trial fixed for 24-6, 25-6 and 1-7.

(Signed) S. C. SWAN,
District Judge.

8-4-46.

The Commissioner of Motor Transport enquires whether this case has been listed for hearing on the 12th and 15th April, 1946 and also if Batta has been deposited for the witness by the plaintiff.

30 1. Comply.

2. Refer to Proctor.

(Signed) S. C. SANSONI,
District Judge.

Reply sent to Commissioner of Motor Transport.

5-6-46.

Summons issued on seven witnesses by plaintiff.

7-6-46.

Proctor for plaintiff files plaintiff's additional list of witnesses.

Proctor for Defendant objects.

40 File.

(Signed) S. C. SANSONI,
District Judge.

No. 1
Journal
Entries
21-12-44 to
30-9-48
—continued.

24-6-46.

Trial.

Mr. I. A. B. Ihalagama for plaintiff.

Mr. D. F. J. Perera for Defendant.

Vide Proceedings.

Trial postponed for 25-6-46.

(Signed) S. C. SANSONI,
District Judge.

25-6-46.

Trial.

Vide Proceedings.

Case postponed for 1st July, 1946.

(Signed) S. C. SANSONI,
District Judge.

10

1-7-46.

Trial.

Mr. I. A. B. Ihalagama for Plaintiff.

Mr. D. F. J. Perera for Defendant.

Vide Proceedings.

C. A. V.

(Signed) S. C. SANSONI,
District Judge.

20

3-7-46.

Proctor for plaintiff tenders documents P1 to P62 produced in evidence at the trial by the plaintiff.

Check and file.

(Signed) S. C. SANSONI,
District Judge.

9-7-46.

Proctor for Defendant files documents D1 to D3.

Check and file.

(Signed) S. C. SANSONI,
District Judge.

30

13-8-46.

Inform Proctors that Judgment will be delivered on 19-8-46 in this case and in the connected cases Numbers 15926,—15931 and 16290 and 16291/M (nine cases).

(Signed) S. C. SANSONI,
District Judge.

13-8-46.
Proctors informed.

19-8-46.
Judgment delivered in open Court.
Enter judgment for the plaintiff as prayed for in para (a) of the prayer of the plaint and for damages at the rate of 50 p.c. per annum on Rs. 5,000 from 18-1-43 to date of allotment of shares. The plaintiff will also be entitled to the costs of this action.

(Signed) S. C. SANSONI,
District Judge.

10
21-8-46.
Decree entered.

2-9-46.
Mr. D. F. J. Perera files petition of appeal of the defendant appellant against the judgment of this Court dated 19-8-46 and tenders stamps Rs. 33 for S. C. Decree and stamps Rs. 16.50 for the certificate in appeal.

- No. 1. Accept.
2. Stamps affixed to the blank form and cancelled.

(Signed) S. C. SANSONI,
District Judge.

20
2-9-46.
Petition of appeal of the defendant appellant having been accepted, Proctor for defendant appellant tenders notice of tendering security on plaintiff respondent and moves that the same be served through Court on Proctor for Plaintiff Respondent.

Notice for 6-9.

(Signed) S. C. SANSONI,
District Judge.

2-9-46.
30 Proctor for defendant appellant tenders application for typewritten copies and moves for a voucher.
Issue.

(Signed) S. C. SANSONI,
District Judge.

3-9-46.
Notice issued.

6-9-46.
Mr. I. A. B. Ihalagama for plaintiff.
Mr. D. F. J. Perera for defendant.
40 Notice of security served.
Amount correct.
Issue voucher.

(Signed) S. C. SANSONI,
District Judge.

No. 1
Journal
Entries
21-12-44 to
30-9-48
—continued.

Voucher for Rs. 250 and Rs. 25 issued.

Kachcheri receipt 88218 for Rs. 250 dated 6-9-46 filed.

6-9-46.

Proctor for defendant appellant tenders security bond together with notice of appeal.

1. File bond.
2. Issue notice of appeal for 11-10.

(Signed) S. C. SANSONI,
District Judge.

7-9-46.

Notice of appeal issued.

Kachcheri Receipt 88226 of 6-9-46 for Rs. 25 filed.

10

27-9-46.

Proctor for Respondent tenders application for typewritten copies and moves for a voucher for Rs. 25.

Issue.

(Signed) S. C. SANSONI,
District Judge.

1-10-46.

Voucher for Rs. 25 issued.

Kachcheri receipt 18914 of 4-9-46 for Rs. 25 filed.

20

11-10-46.

Notice of appeal served on Proctor for plaintiff respondent.

Forward record to Supreme Court.

(Signed) S. C. SANSONI,
District Judge.

3-9-47.

Record sent to Supreme Court with two briefs for the Judges (D1) Separate.

10-8-48.

Registrar Supreme Court forwards record together with Supreme Court Decree and Judgment.

The Judgment of the District Court is affirmed subject to the modification.

The defendant is directed to pay the respondent half costs of appeal.

(Signed) Illegibly.
District Judge.

30

28-8-48.

Proctor for plaintiff files application for execution of Decree, together with District Court copy Decree and Supreme Court copy decree and moves to issue writ against the defendant.

No. 1
Journal
Entries
21-12-44 to
30-9-48
—continued.

Allowed.

(Signed) Illegibly.
District Judge.

2-9-48.

Writ issued against defendant returnable 30-8-49.

10 7-9-48.

Proctor for defendant petitioner files petition of the defendant-petitioner Company together with affidavit of its Secretary and Manager and for reasons stated therein moves that the Court be pleased to grant the prayer of the defendant petitioner Company contained in the said petition.

Mr. Advocate Fernando in support.

Stay execution and notice plaintiff's Proctor for 20-9.

(Signed) Illegibly.
District Judge.

20 20-9-48.

Mr. I. A. B. Ihalagama for plaintiff.

Mr. D. F. J. Perera for defendant.

Notice not issued.

Vide Proceedings.

Order on 27-9-48.

(Signed) Illegibly.
District Judge.

27-9-48.

Order delivered.

30 I stay further execution pending a decision of the application which is now before the Supreme Court.

(Signed) Illegibly.
District Judge.

30-9-48.

Proctor for Plaintiff files Bill of Costs.

Proctor for Defendant receives notice.

Tax Bill.

(Signed) Illegibly.
District Judge.

Plaint of the Plaintiff.

IN THE DISTRICT COURT OF COLOMBO.

No. 15925/M.

L. A. PERERA of Nittambuwa in Veyangoda.....*Plaintiff**vs.*THE SRI LANKA OMNIBUS COMPANY LIMITED
of No. 41, Victoria Buildings, Norris Road, Colombo,
.....*Defendant.*

This 20th day of December, 1944.

10

The Plaintiff of the Plaintiff abovenamed appearing by I. A. B. Ihala-
gama his Proctor, states as follows:—

1. The defendant is a limited Liability Company duly incorporated under the Companies' Ordinance No. 61 of 1938 and having its registered Office and principal place of business at No. 41, Victoria Building, Norris Road, Colombo within the local limits of the jurisdiction of this Court.

2. Under the reorganised scheme of road transport introduced by Ordinance No. 47 of 1942 exclusive road licences were to be issued from 15th January, 1943 only to companies and not to private individuals who owned motor buses. The Defendant Company was formed to meet 20 the said situation. Prior to the said date the Plaintiff was the owner of the motor bus bearing the distinctive No. Z817 and had in respect of the said bus, road licence to ply it between Colombo-Attanagalla *via* Pasyala.

3. After the incorporation of the defendant company the directors of the said company invited the Plaintiff, *inter alios*, to two meetings held on or about 21st December, 1942 and 6th January, 1943 respectively. At the said meetings the defendant company through its directors offered to the Plaintiff and to other owners of buses plying between Kandy and Colombo, Kurunegala and Colombo and on subsidiary routes, in con-30 sideration of a transfer to the said company of the said bus with its route licence and goodwill, shares in the said Company to the amount of the value to be assessed on the said bus, its route licence and good-will.

4. The Plaintiff, *inter alios* accepted the said offer. The said bus of the Plaintiff with its route licence and goodwill were assessed at Rs. 5,000. The Plaintiff thereafter in consideration of the said offer of the defendant company to allot to the Plaintiff shares to the said value in the defendant company in or about January, 1943 transferred to the defendant company the said bus and consented to the issue to the defendant company of the exclusive road licence in respect of the said 40 bus.

5. In breach of the said agreement the defendant company has wrongfully and unlawfully failed and neglected to allot and to assign to the Plaintiff shares in the defendant company to the value of Rs. 5,000.

6. By reason of the said breach of its agreement by the defendant company the Plaintiff has suffered loss and damage in the value of Rs. 750, per mensem.

No. 2
Plaint of the
Plaintiff
20-12-44
—continued.

Wherefore the Plaintiff prays :—

(a) That the defendant company be ordered to allot and to assign to the Plaintiff shares in the said company to the value of Rs. 5,000.

(b) To pay to the Plaintiff as damages a sum calculated at the rate of Rs. 750 per mensem from 18th January, 1943 up to the date of action and thereafter up to the date of the allotment of the said shares.

10 (c) For costs, and for such other and further relief as to this Court shall seem meet.

(Sgd.) I. A. B. HIALAGAMA,
Proctor for Plaintiff.

No. 3.

Answer of the Defendant.

No. 3
Answer
of the
Defendant
23-3-45

IN THE DISTRICT COURT OF COLOMBO.

No. 15925/M.

L. A. PERERA of Nittambuwa in Veyangoda.....Plaintiff

vs.

20 THE SRI LANKA OMNIBUS COMPANY LIMITED
of No. 41, Victoria Building, Norris Road, Colombo.....Defendant.

The 23rd day of March, 1945.

The Answer of the Defendant abovenamed appearing by D. F. J. Perera its Proctor states as follows :—

1. The Defendant admits the statements made in para 1 of the plaint.

2. Answering para 2 of the plaint.

30 (a) the defendant states that the Omnibus Service Licensing Ordinance, No. 47 of 1942, was passed to provide for a scheme of exclusive road service licences ;

(b) the defendant states that the issue of such exclusive road service licences was not limited by the Ordinance aforesaid to Companies and ;

(c) the defendant admits that the plaintiff was the owner prior to January 31, 1943, of the omnibus referred to and that it had been licensed under the Motor Car Ordinance No. 45 of 1938 to run on the route mentioned in para 2 of the plaint aforesaid.

3. The Defendant denies all and singular the statements contained in paras 3, 4, 5 and 6 of the plaint.

No. 3
Answer
of the
Defendant
23-3-45
—continued.

4. Further answering, the Defendant states—

(a) that having regard to the imperative provisions contained in rule 1 in the First schedule to the Omnibuses Service Licensing Ordinance, No. 47 of 1942, aforesaid, the plaintiff could not, as the holder of one licence only, under the Motor Car Ordinance, No. 45 of 1938, authorising the use of omnibuses on the route Colombo-Attanagalla *via* Pasyala, apply successfully for an exclusive road service licence in respect of the said route, or of a route substantially the same, within the meaning of the said rule ;

10

(b) that in the circumstances, the plaintiff—

(1) transferred to the defendant the omnibus referred to in para 2 of the plaint ;

(2) transferred to the defendant the route value and goodwill of the said omnibus and ;

(3) gave his written consent to the issue of an exclusive road service licence to the defendant, in consideration of a sum of Rs. 5,000.

5. At a meeting of the Directors of the Defendant Company, held on November 17, 1943 the plaintiff, after the manner in which the defendant Company's business was being carried on had been explained to him, refused to become a shareholder of the Defendant Company.

6. Thereafter, on November 18, 1943, the Defendant sent the plaintiff a cheque for Rs. 5,100 being the consideration of Rs. 5,000 aforesaid, and accrued interest on the same at the rate of 10%.

7. The Plaintiff refused to accept the same and returned the said cheque with his letter of November 20, 1943.

8. The Defendant by its letter of December 22, 1943 informed the plaintiff that no interest will be paid to him after that date on the aforesaid sum of Rs. 5,000 and that he may call for the same after giving 30 notice.

9. The Defendant brings into Court for the benefit of the plaintiff the said sum of Rs. 5,100.

Wherefore the Defendant prays—

(a) that the plaintiff's action, in so far as he claims judgment in a sum exceeding Rs. 5,100 be dismissed ;

(b) for costs and ;

(c) for such other and further relief as the Court deems meet.

(Sgd.) D. F. J. PERERA,
Proctor for Defendant. 40

Amended Answer of the Defendant.

IN THE DISTRICT COURT OF COLOMBO.

No. 4
Amended
Answer of
the Defen-
dant
21-9-45

No. 15925/M.

L. A. PERERA of Nittambuwa in Veyangoda.....*Plaintiff**vs.*THE SRI LANKA OMNIBUS COMPANY LIMITED
of No. 41, Victoria Buildings, Norris Road, Colombo.....*Defendant.*

The 21st day of September, 1945.

10 The Amended answer of the Defendant abovenamed appearing by
D. F. J. Perera, its Proctor states as follows :—1. The Defendant admits the statements made in para 1 of the
Plaint.

2. Answering para 2 of the Plaintiff,

(a) the Defendant states that the Omnibus Service Licensing
Ordinance, No. 47 of 1942, was passed to provide for a scheme
of exclusive road service Licences ;20 (b) the Defendant states that the issue of such exclusive road
service licences was not limited by the Ordinance aforesaid to
Companies and ;(c) the Defendant admits that the Plaintiff was the owner prior to
January 31, 1943, of the Omnibus referred to and that it had
been licensed under the Motor Car Ordinance No. 45 of 1938
to run on the route mentioned in para 2 of the Plaintiff aforesaid.3. The Defendant denies all and singular the statements contained
in paras 3, 4, 5 and 6 of the Plaintiff.

4. Further answering the Defendant states :—

30 (a) that having regard to the imperative provisions contained in
rule 1 in the First schedule to the Omnibus Service Licensing
Ordinance, No. 47, of 1942, aforesaid, the Plaintiff could not,
as the holder of one licence only, under the Motor Car Ordinance,
No. 45, of 1938, authorising the use of the Omnibuses
on the route Colombo-Attanagalla *via* Pasyala, apply success-
fully for an exclusive road service licence in respect of the said
route, or of a route substantially the same, within the meaning
of the said rule ;

(b) that in the circumstances, the Plaintiff :—

(1) transferred to the Defendant the Omnibus referred to in
para 2 of the Plaintiff ;

No. 4
Amended
Answer of
the Defen-
dant
21-9-45
—continued.

- (2) transferred to the Defendant the route value and goodwill of the said Omnibus and ;
(3) gave his written consent to the issue of an exclusive road service licence to the Defendant in consideration of a sum of Rs. 5,000.

5. At a meeting of the Directors of the Defendant Company, held on November 17, 1943, the Plaintiff, after the manner in which the Defendant Company's business was being carried on had been explained to him, refused to become a shareholder of the Defendant Company.

6. Thereafter, on November 18, 1943, the Defendant sent the Plaintiff a cheque for Rs. 5,100 being the consideration of Rs. 5,000 aforesaid, and accrued interest on the same at the rate of 10%.

7. The Plaintiff refused to accept the same and returned the said cheque with his letter of November 20, 1943.

8. The Defendant by its letter of December 22, 1943, informed the Plaintiff that no interest will be paid to him after that date on the aforesaid sum of Rs. 5,000 and that he may call for the same after giving notice.

9. The Defendant brings into Court for the benefit of the Plaintiff the said sum of Rs. 5,100.

10. Even if there had been any such offer and acceptance as is pleaded in paras 3, and 4, of the Plaintiff the Defendant denies that there was any valid offer or agreement binding in law on the Defendant Company in the absence of a decision of the Board of Directors at a duly constituted meeting of the Board of Directors authorising such offer or the conclusion of any such agreement.

Wherefore the Defendant prays :—

- (a) that the Plaintiff's action, in so far as he claims judgment in a sum exceeding Rs. 5,100 be dismissed ;
(b) for costs, and ;
(c) for such other and further relief as the Court deems meet. 30

(Sgd.) D. F. J. PERERA,
Proctor for Defendant.

No. 5
Issues
Framed
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No. 5.

Issues Framed.

15925/M.

31-8-45.

Adv. E. G. WICKREMENAYAKE with Adv. JAYASUNDERA for the Plaintiffs.

Adv. CHOKSY with Adv. D. W. FERNANDO for the Defendant.

There are altogether 7 cases for trial to-day including this case by 7 different Plaintiffs against the same Defendant. All causes of action 40

are similar namely each Plaintiff asks for an allotment of shares in the Defendant company arising out of an agreement arrived at the same meeting.

No. 5
Issues
Framed
31-8-45
continued.

Mr. Wickremenayake states that the evidence will be exactly the same in each case and he suggests either that the evidence should be lead in one case and treated as evidence in the other cases and that the Court should write 7 separate judgments, or that one case should be tried and that the parties in the other cases should agree to abide and be bound by the final result of the case that will be tried. Mr. Wickremenayake who represents all the Plaintiffs is agreeable to being bound so far as the Plaintiffs in the other cases are concerned by the decision in this case, thus obviating 7 separate trials and 7 separate appeals.

Mr. Choksy submits that the evidence in the other cases of any alleged offence will not necessarily be evidence in this case and *vice versa*. Furthermore, in each case the question of assessment of damages will have to be tried separately.

Mr. Wickremenayake says that the evidence in the other cases is relevant in this case because the defendant company did not deal with each plaintiff separately but with all the plaintiffs at one meeting, so that the evidence in any one case would be relevant in the others. With regard to the measure of damages, each plaintiff would be entitled to a share of the profits in proportion to the number of shares that should have been allotted to such plaintiff. If in this case that is being tried, the Court finds that the plaintiff should have been paid a certain sum as profit for each share, the same measure of damages will apply in the other cases.

Mr. Choksy states that as regards the admissibility of evidence, he does not agree with the suggestion made by Mr. Wickremenayake and that the matter can be ruled upon when it arises. But in view of the agreement of the other plaintiffs to be bound by the measure of damages in this case, Mr. Choksy states that if the Court rules that the evidence in other cases is admissible in this case he will agree to be bound by the decision in this case.

It does not seem that either party can come to anything like an agreement in this matter. I shall, therefore, try this case quite independently from the others and rule as regards the admissibility of evidence when the question arises. After I have decided the case the parties can consider their positions in the other cases.

Mr. Wickremenayake opens his case.

In the course of his address to me he proposes to read the letter written by the Manager of the defendant company to the plaintiff in one of the connected cases. Mr. Choksy says that that letter is not admissible and that Mr. Wickremenayake should therefore not refer to it. Both parties desire that I should rule on whether that letter is admissible and agree to abide by my decision in this matter. Both parties desire that I should make an immediate ruling thereon.

No. 5
Issues
Framed
31-8-45
—continued.

Mr. Wickremenayake submits that the contract upon which this action has been framed and the contracts in the other cases arose from the same transaction. They were concluded at a meeting held by the Directors at which all the plaintiffs were present and that they were not individual contracts entered into by each plaintiff and the defendant separately. The averments in all the plaints are identical except in regard to the amounts claimed in each. The averments in all the answers are identical. The substance of the answer is that each plaintiff at a subsequent meeting held in November, 1943 refused to take shares. He refers me to para 5 of the answer. The same averment is made in 10 every answer so that the question at issue between each plaintiff and the defendant company is whether each plaintiff after the meeting of November, 1943 refused to become a shareholder.

To decide the question the court will have to weigh the probability and improbability of the refusal of each plaintiff as alleged. He therefore submits that the correspondence between the defendant and each plaintiff, between the first meeting and the meeting of November, 1943, would be relevant to show that in point of fact each plaintiff had accepted shares and was treated as a shareholder; that each plaintiff considered himself a shareholder and that the defendant acknowledged him to be a share-20 holder. He says that under the Indian Procedure Code all these plaintiffs could have brought one action. In view of the fact that our code is not amended that so many issues had to be framed. He relies on Section 11 sub-sections 1 and 2 of the Evidence Ordinance.

Mr. Choksy in reply submits that as our Court insists on each plaintiff bringing a separate case, the Court should try each case on its own merits and that it should not allow the evidence in another case to be introduced in this case merely because it arose from the same transaction. He says that out of one transaction several causes of action may arise. The plaintiff in this case alleges he has a cause of action against the defendant. 30 If the argument of counsel for the plaintiff is sound, the Court will have in this case to investigate the other 6 alleged causes of action. Even after that investigation the Court can come to a different conclusion in this case. He contends that Section 11 applies only to facts relevant as between parties to the case in respect of the particular cause or causes of action on which the action has been brought and which are consistent or inconsistent with the position of the plaintiff or the defendant.

I hold that the document is admissible in evidence, under Section 11 (b) of the Evidence Ordinance. One of the allegations in paragraph 5 of the answer, the defendant company takes up the position 40 that the plaintiff at a meeting held on 17th November, 1943 refused to become a shareholder after he had been informed of the manner in which the company's business was being transacted. This is a fact not an issue. The same defence is made in a connected case. The plaintiff, in my opinion, can call Gunasekere in this connexion to prove that he was present at that meeting and that no such thing happened; that he did

not refuse to become a shareholder and in support of his allegation he can produce this letter which is objected to, and it can immediately become relevant.

No. 5
Issues
Framed
31-8-45
—continued.

At this stage Mr. Choksy agrees in view of my finding on the admissibility of this evidence, that all the evidence should be led in this case and both parties, and the plaintiffs in the other cases and the defendant in each of the other cases agree to abide and be bound by the final decision in this case on all issues except on the issue of damages. On that issue the measure of damages as ultimately fixed in this case would be binding on the other cases as well.

Mr. Wickremenayake on behalf of all the plaintiffs states that the measure of damages should be at a rate per share as the Court will decide.

In the event of the Supreme Court holding that my decision on the admissibility of evidence is not correct, this agreement will not be binding on either party.

(Sgd.) S. C. SWAN,
Additional District Judge.

(Adjourn for Lunch).

15925/M.

31-8-45.

20 (After Lunch).

Mr. Choksy now states that the Managing Director of the Defendant Company who is present in Court, does not wish to enter into the agreement as regards the other cases without the sanction of the other directors.

Mr. Wickremenayake wishes me to note that Mr. A. P. de Zoysa, one of the Managing Directors, was in Court while the terms were being recorded.

Before the luncheon interval, thinking that the agreement would go through, I caused copies of the agreement as recorded in this case to be made in order that they should be filed in each of the other cases, and I also intended to get both the plaintiff and the defendant to sign the agreement in proof of their consent. As, however, the defendant does not wish the agreement to go through at this stage, this case will proceed to trial. This case cannot be concluded to-day. I therefore suggest to the director or directors present in Court that the matter may be put to the Board of Directors and if they agree, the agreement can be recorded on the next date.

Mr. Wickremenayake continues his address.

He suggests the following issues :—

- 40 (1) Was it agreed between the plaintiff and the defendant at two meetings held on 21-12-42 and 6-1-43 that the plaintiff would transfer to the Defendant Company bus No. Z-817 together with the good-will and route licence, in consideration of the

No. 5
Issues
Framed
31-8-45
—continued.

allotment to the plaintiff of shares in the Defendant Company to the assessed value of the said bus, goodwill and route licence ?

(The plaintiff admits that an assessment was to be made by the Defendant Company and that the value of the bus, good will and route licence was assessed at Rs. 5,000).

- (2) Has the Defendant Company in breach of the said agreement failed and neglected to allot shares to the plaintiff in the Defendant Company to the said value ?
- (3) If issues 1 and 2 are answered in the affirmative, is the plaintiff 10 entitled to :
 - (a) a decree directing the Defendant Company to allot to the plaintiff shares of the said value in the said Company ?
 - (b) damages for failure so to allot up to the date of allotment ?
- (4) To what damages is plaintiff entitled on issue 3 (b) ?

Mr. Choksy suggests that issue 1 be recast as follows :—

- (1a) Did the Defendant Company through its directors at its meetings on 21-12-42 and 6-1-43 offer to allot to the plaintiff shares of the Company to the assessed value of the bus, good will and route licence ? 20
- (1b) Did the plaintiff accept the said offer and transfer the bus, good will and route licence in consideration of the Defendant Company's alleged offer to allot to the plaintiff shares in the Company as aforesaid ?
- (1c) Is the alleged offer to allot shares to the plaintiff valid in law and binding on the Defendant Company ?
- (1d) If not, can plaintiff have or maintain this action ?

Mr. Choksy does not object to issues 2 and 3. He suggests a further issue :—

- (5) Did the plaintiff agree to transfer the said bus, good will and 30 route licence in the circumstances set out in para 4 of the answer.

Mr. Wickremenayake asks the Court to retain issue 1 as suggested by him and not split it into issues 1a and 1b as suggested by Mr. Choksy. He suggests that the only purpose of splitting issue 1 into 1a and 1b is to allow the defendant to question the validity of the defendant's own offer. In the answer it has not been pleaded that the offer was invalid ; on the contrary the agreement appears to be revealed ; the defendant however pleaded that the plaintiff backed out of the agreement.

With regard to issue 5, Mr. Wickremenayake says that nothing 40 follows from it and therefore it should be ruled out.

ORDER.

I accept issue 1 as suggested by Mr. Wickremenayake. I do not think it is necessary to split it into issues 1a and 1b as suggested by

Mr. Choksy. It is true that in the plaint it is alleged that the defendant made an offer and the plaintiff accepted the offer, but every valid agreement results as from an offer and an acceptance. I agree with Mr. Wickremenayake that the object of dividing up issue 1 as suggested by him into 1a and 1b is to give the defendant an opportunity of questioning the validity of the alleged offer. In the answer it is not stated that though such an offer may have been made it was not valid and binding in law. I therefore rule out issues 1a, 1b, 1c and 1d as they do not arise from the defendant's answer.

No. 5
Issues
Framed
31-8-45
-- continued.

10 Mr. Choksy now suggests an alternative issue :—

(6) Was the alleged agreement referred to in issue 1 valid in law and binding on the defendant?

Mr. Wickremenayake objects as it is not pleaded.

Mr. Choksy says that it is not necessary for the defendant to plead that the agreement was valid because the plaintiff had to satisfy the court that the agreement was valid.

I intimate to Mr. Choksy that I do not propose to accept issue No. 6 as suggested by him because it does not arise from the answer, but I am prepared to give him an opportunity to amend his answer so as to incorporate this matter.

Mr. Choksy asks for a date to amend the answer.

Mr. Wickremenayake asks for his costs.

I allow the defendant an opportunity to amend his answer so as to incorporate the matter suggested in issue 6 or to foreshadow any other defence he is likely to take up at the trial. Defendant will pay the plaintiff costs agreed at Rs. 210.

Amended answer on 21-9-45.

(Sgd.) S. C. SWAN,
Additional District Judge.

30 No. 15925.

24th June, 1946.

ADVOCATE WICKREMENAYAKE with ADVOCATE W. JAYAWARDENE for the Plaintiff.

ADVOCATE CHOKSY with ADVOCATE D. W. FERNANDO for the Defendant.

Mr. Choksy wishes to repeat his objection which he took to the admissibility of the evidence of letters written by the plaintiffs in the other cases. Although my opinion is that Mr. Choksy is bound by the ruling already given by Mr. Swan, Additional District Judge, on that point, still as the case is being heard by me the matter has been argued again and I am of the same opinion as Mr. Swan that the evidence is relevant and admissible.

No. 5
Issue
Framed
31-8-45
—continued.

Both counsel agree to proceed on the issues already accepted by the Court, except that Mr. Choksy frames the following further issues :—

- (7) Was the alleged agreement pleaded in paragraph 3 of the plaint valid in law and binding on the Defendant Company for the reason stated in paragraph 10 of the answer.
- (8) If not can the plaintiff have or maintain this action. Mr. Wickremenayake has no objection.

Issues accepted.

No. 6.

No. 6
Plaintiff's
Evidence
L. A. Perera
Examina-
tion

Plaintiff's Evidence.

10

MR. WICKREMENAYAKE calls :

L. A. PERERA Affirmed

I am the plaintiff. Prior to 1942 I was the owner of two buses and I was running them on the route Colombo-Attanagalla. In 1942 there was a suggestion about unifying the transport scheme and under that individuals were not allowed to run buses after January, 1943. The suggestion was that the owners should form themselves into bus companies and one company would be given the licence to run buses on particular routes. This was a scheme of Mr. Nelson.

In 1942 there were meetings of the Bus owners held by Mr. Nelson 20 but I did not attend those meetings. Then the Defendant Bus Company was incorporated in November, 1942. (This is admitted by Mr. Choksy).

After the incorporation I received a letter dated 16-12-42 notifying me of a meeting of all the bus owners of the Colombo-Kandy road fixed for the 21st instant. I produce that letter P1. I attended that meeting. Dr. A. P. de Zoysa took the chair and the other Directors were present, namely, M. Jayasena, Muhandiram V. J. Fernando, Francis Alwis, W. J. Fernando and also the Manager, Donald Perera and Obeyesekere the Secretary were present.

The meeting was held at the Victoria Buildings, Norris Road, the 30 office of the Company.

The Directors were seated at a table. There were 15 or 20 bus owners present. Dr. A. P. de Zoysa took the chair and said that from the next year individual owners cannot run buses and that they must form themselves into companies and that he was going to form such a company and asked us whether we would consent to join the company. We said we consented. Those who consented were asked to raise their hands and we all raised our hands. Thereafter he said those who did not consent should raise their hands and there were none.

M. de Zoysa said that when we joined the company there would be 40 a valuation of the buses made and to the extent of the value shares would

be given in the company. He said that the route licences would also be valued. He said that he would send a representative of the company to do the valuing. After the valuation of the buses and route licences had been made he said we could run our buses on our own and give the company 10 per cent. We agreed on that day to give up our buses and take shares in the company. The various plaintiffs in the other cases were also present. I do not know Alice Wijeratne but her husband was present. Having come to this decision we went away.

I next received a letter dated 2nd January, 1943 P2 from the Sri Lanka Omnibus Company signed by its Secretary Donald Perera P2.

At the first meeting I referred to prospectuses were shown to us showing how many shares were outstanding and so on. I produce a copy of the prospectus P3.

On receipt of P2 I attended the meeting on the 6th January. At that meeting all the directors were present except Dr. A. P. de Zoysa. M. Jayasena took the chair. At that meeting he said that the Company is now formed and inquired whether we had brought the certificate of registration of our buses. Some said they had brought their certificates and others said they would bring theirs. He then asked whether the buses had been brought for the purpose of valuation and some said they had and I said I would bring mine two days later. At that meeting he said that individuals could run their buses and take 10 per cent. of the income. There was no talk at any of those meetings of selling the buses to the Company at a valuation. We always expected to get shares for the value of the buses. At that second meeting a document was signed.

(Mr. Wickremenayake says his Proctor has written to the other side asking for a certified copy of the document. Not produced.)

(Shown P4). This is the form that was signed that day in English and Sinhalese. I signed it on a fifty-cent stamp. All of us signed such documents. On that day when we signed these forms they promised to give us shares for our buses. Our signatures were obtained in order to give us those shares. On that day Malawana said that if there were any shares still outstanding he was willing to pay for them and take them over. He said he could take shares even up to Rs. 50,000. We were told that we would get the certificate for our shares by post. We were told that certificate would be sent after valuing our buses and allotting the shares.

On the 9th January I received from the Company the letter P5 signed by Donald Perera, Manager. I sent the particulars requested in the letter—I went personally and handed them over.

On 18th January my buses were assessed. That was done in M. Jayasena's garage in Peliyagoda. I took my buses there for the purpose. Donald Perera and P. C. Fernando were the people who did the valuation.

After the valuation we went to the company's office and consented to give the transfers to the company. My Chevrolet Bus No. 857 was

No. 6
Plaintiff's
Evidence
L. A. Perera
Examina-
tion
—continued.

valued with the good will at Rs. 3,250. I also had a bus Z5007 in respect of which only the route licence and good will was valued. That is because in respect of that bus I gave up only the route and not the bus. I converted the bus into a lorry as my lorry had been commandeered. The assessment by the company for my bus and the route licences and good will was Rs. 5,000 and I gave a document saying that I accepted the assessment. I produce that document P6. This document was typed by Donald Perera and I signed it.

(Mr. Wickremenayake calls for the original.—Not produced).

On that date I obtained a receipt from the Company P7. The¹⁰ balance amount due on the purchase hire agreement on which I purchased one of the buses was paid by me to the Company. This document was given to me on the 23rd February. I gave up my buses on 18th January.

We were first asked to run our buses but after we signed these documents the company started running them and we got nothing. When we were asked to run our buses 90 per cent. was to be taken by us and 10 per cent. given to them. I ran the buses till the 18th January till 11 a.m. on the 18th. On that day I handed over the buses and they put their driver and ran the buses. Jayasena put his driver and ran the bus. I got nothing after that. I produce P8 (Original handed by²⁰ Mr. Choksy) letter dated 23-1 sent by me to the company. I received an acknowledgement of this letter by P9 dated 11-2-43. I heard nothing further about it after that.

On one of my buses I had to pay some money to the Transport Company and I paid that the receipt for which I produce P10. After that so far as I was concerned I had no further communication with the Defendant Company, but I used to meet other bus owners and I found they were all grumbling.

Then I received a letter requesting me to come for a meeting on the 17th November. Before I went to that meeting I received a telegram³⁰ on the 16th from Kirineris Perera. I do not have that telegram with me. On receipt of that telegram I went to the Baudha Mandiraya at 9 a.m. I had been asked in the telegram to come there before attending the meeting of the Sri Lanka Bus Company which was to be at 11 o'clock. At the Baudha Mandiraya. I met Kirineris Perera and there was Mr. Mivanapalana also there, it was his office. There were about 10 bus owners there including the plaintiffs in these various cases. We had a discussion there and Mr. Mivanapalana took part in the discussion and the lot of us went to the meeting together. After the discussion we had decided to take our share and we went to the meeting with the intention of getting⁴⁰ our shares. At that meeting the directors were present and Dr. A. P. de Zoysa was present. Dr. A. P. de Zoysa said that the allocation had not yet been completed, that if a European company came in we would all be ousted and he said that it will take two or three years before we could expect any dividend and that they would pay us the money. Everybody refused to take money. Mr. Malawana said "You are our Minister in the State Council and you are considered to be a saint and is this how you do

things." He also said that we should be given our shares and whether there was going to be a profit or loss we were prepared to take it and that we wanted our shares and nothing more. M. Jayasena got up and said, don't expect anything out of the 90 per cent. After that we decided to litigate in the matter.

No. 6
Plaintiff's
Evidence
L. A. Perera
Examination
—continued.

If the defendant has stated in the answer that we refused to take our shares that is not true, we always insisted on having our shares. What is in para 6 of the answer is also false that they sent me a cheque for Rs. 5,100 on the 18th January.

10 (Mr. Choksy states that he is not contesting the position that no cheque was sent to this plaintiff and that this statement of fact arises from the fact that one answer was drafted in regard to all the cases. He states that the money has been brought into Court).

I ask that I be allotted shares to the extent of Rs. 5,000 and I also ask for damages from the Defendant Company. They have used my buses from the 18th January, 1943 and I claim at Rs. 750 a month. I ran buses before I gave over my buses to the company and I made that a month.

I produce the balance sheet showing that the income of this company for January 16, 1943 to January 16th, 1944, that is the gross takings, 20 amounted to Rs. 1,676,647; agency fees is given at Rs. 1 million odd. The expenses are shown as Rs. 20,000 less than the income. I produce the balance sheet. P11.

Cross-examination.

L. A. Perera
Cross-
examination

I was running my buses on this route before the Ordinance came into operation. M. Jayasena owned a number of buses on these two routes Colombo-Kandy and Colombo-Kurunegala. V. J. Fernando also had 7 or 8 buses on those two routes. V. J. Fernando may have contributed 12 buses to the Defendant Company, I do not know. I am not certain how many buses Jayasena contributed to the company. I do not know 30 if it was 41 buses. I know he gave a number of buses. I do not know whether he gave a larger number than all the plaintiffs in these cases. He must have given a large number and that is why he is a Director of the Company. Between himself and Muhandiram V. J. Fernando they may have contributed the majority but L. S. Little Service also had a number of buses. Those are buses owned by Alwis and Fernando who are also Directors of the Company. Samaranayake of the Tarzan bus service gave four or five buses and he was given a branch and he is now a Director of the Company. Those four or five people possessed the majority of the buses running on those two routes. We did not at any 40 time run our buses on those routes, we had the branch roads. Those people mentioned may have had the monopoly of those two routes Colombo-Kandy and Colombo-Kurunegala. They had a large number of buses on those two routes. Once the licence was issued to the Company we could not ply our buses on the branch routes on which we plied before. It is owing to that law that that we handed over our buses to the Company.

No. 6
Plaintiff's
Evidence
L. A. Perera
Cross-
examination
—continued.

If we did not give our buses to the Company we could not make use of our buses after the Company was formed and the licence issued to the Company. But we could have sold our buses for Rs. 20,000 or Rs. 30,000 instead of giving them to the Company for Rs. 3,000. Those days there was a big demand for buses by the military. In December, 1942 there was a demand for buses. It is because we were told that we were getting shares that we gave our buses to the Company. I could have sold my buses without the route licences. I admit that if the Company did not take my buses or my route licences I could not make use of my route licences. The letter P8 was drafted for me in Mr. Mivanapalana's office. 10 He drafted the letter and he typed it and he kept a copy of the letter. He has been connected with many bus companies for some time. He did a lot of work in the formation of various companies under the new Ordinance and that is why we went to him because he knew the position. He is also the Manager of an Insurance Company. My bus was insured in that Company and that is another reason why I went to him. When I went to him I did not tell him what had happened at the meeting of the 21st December. There was no necessity to tell him all that, I went there only to get the letter drafted.

In the first sentence of the letter I have stated that I handed over 20 the buses on the 18th January on an agreed valuation. Mr. Mivanapalana did not ask me how the valuation was made and so on. I told him I handed over the buses on an agreement that I would be handed shares in the Company. At the meeting of the 21st December Dr. A. P. de Zoysa did not make mention about shares, on that day he said that individual owners could not run buses and that a company must be formed. Nothing was said about the 90 per cent. and 10 per cent. at that meeting. Nor did he say about the basis on which the shares were to be calculated. The prospectus was shown to us that day. Apart from that nothing was said about the Company's work at that meeting, 30 except that he said that the Company was being formed. He said at that meeting that the buses would be taken and people who are willing to take shares should raise their hands. I did not mention all these facts to Mr. Mivanapalana. Nor did I tell him what happened at the meeting of 6th January. At that meeting of the 6th Jayasena asked us to run our buses and to give 10 per cent. and take 90 per cent. We were not to account for the 90 per cent. to the Company. Each man had to run his own buses and take 90 per cent. What he said was that if all the earnings were put together it would be a loss to him and he asked us to run our own buses and give the Company 10 per cent. He did not mention 40 anything about the repairs, etc. of the buses. I did not say all this to Miwanapalana. I did not tell even that there had been a meeting on the 6th January. I went alone to Miwanapalana and got the letter written. I told him what I wanted him to write to the Company and the various questions I wanted him to put to the Company in the letter. After it was drafted it was explained to me. I found he had correctly put down what I wanted him to write. What he has stated in the letter is correct that I have not been able to find out the plan or scheme on

which the Sri Lanka Bus Company is going to operate. I wanted him to state that because they had told us that we can run our own buses but later when the buses were given over they ran the buses. I also wanted to know the basis on which they were going to work the business.

No. 6
Plaintiff's
Evidence
L. A. Perera
Cross-
examination
— continued.

I went to the meeting of the 17th November, 1943 with the intention of getting shares. Dr. de Zoysa spoke at that meeting and then Jayasena said do not expect to get anything out of the 90 per cent. That was said by him as we were coming out after the meeting. In spite of that we were still to take our shares, even if we were not to get anything out of the 90 per cent.—even at a loss we were willing to take the shares.

I claim damages at Rs. 750 a month. I had only one bus which I drove myself and that was my sole means of livelihood. The other bus I had purchased two or three months before the Defendant Company took over. I did not pay any income tax when I ran my one bus. I used to make Rs. 200 or Rs. 300 a month and I had to spend for repairs out of that. Prior to the formation of the Nelson plan there was no competition on that route.

It is not correct to say that prior to November, 1943 there was no definite agreement between ourselves and the Company as to the conditions and terms on which the buses were taken over, there was an agreement. Buses were run on the system of branch managers from 18-1. That is the day we handed over the buses. I did not expect to be a branch manager having given one bus. We expected that two or three of us together could form into a branch. I do not know what the expectation was of the other plaintiffs in the other cases, I did not discuss that with them. We did not put forward a scheme to the directors that so and so of the plaintiffs should form a branch. Obeyesekere said that as I had my buses in Attanagalle I could run those buses on my own and give 10 per cent. to the Company. That was told to me before I gave the buses to the Company. But after I signed the papers on the 18th they put their drivers and ran the buses. Jayasena did that. Those who were appointed branch managers were not those who had a large number of buses.

At Attanagalle there were three brothers who had five or six buses and they were running the Sri Medulla bus, Singhair and Atta buses from Attanagalle to Negombo two and one to Colombo. Those buses they ran to Negombo were transferred to the Attanagalle branch. The brothers were W. L. Manuel Appuhamy, Paulis Appuhamy and Herat Appuhamy. The Company promised to put four of our buses also into that branch but they instead took them to the Peliyagoda branch. I was willing to the Branch Manager system if we also got a branch for ourselves. I did not mind to which branch my buses were put to. If we also had a branch and ran it we would have been agreeable to that scheme. If I was not given a branch like that I should have been given my shares.

REXD. Nil.

(Sgd.) W. SANSONI,
District Judge.

G. D. E. MALAWANA, Affirmed.

58, Trader, Pothuhera. I was the owner of 10 buses in 1942. I had licensed four only. I ran my buses on the lines Colombo-Kurunegala three buses, and Kurunegala-Puttalam one bus. On the Kurunegala-Puttalam road there was another person running buses in competition. M. Jayasena was doing that.

On 26-12-42 there was a meeting but I did not attend it. I received a notice to attend that meeting. Then I got a notice to attend a meeting on 6th January and I went for that meeting.

There were 10 or 15 bus owners at that meeting and we were told 10 that the buses should be handed over to the company and that shares would be given to the owners. The directors at that meeting were Jayasena, Muhandiram B. J. Fernando, Alwis and some others whom I did not know. I cannot remember if Dr. A. P. de Zoysa was there. After the meeting we signed some papers.

(Shown P4). This is the type of paper that was signed. I had this form with me. I was sent a form like that before the meeting. I did not take that to the meeting. That is the form I have now produced. I signed one of the forms at the meeting on a fifty-cent stamp. Obeye-
sekere collected the signed forms. 20

I produce the notice I received P12 and on 4th January I received another letter P13. For the meeting of the 6th I did not take my licence. My buses were valued on the 13th January. After the 6th January up to the 13th or 15th I ran my buses—that is till they were valued. After they were valued I gave them over. When I handed over the buses I also gave them Rs. 105 being the earnings of that day. I produce P14 a receipt for the Rs. 105. It is dated 1st February.

I produce letter dated 26-1-43 P15 in reply to a letter of mine. The total assessment of my buses was Rs. 9,250. I produce a document given to me by the Defendant Company to that effect P16. 30

I did not at any time agree to take cash payment for my buses. At the meeting of the 6th L. A. Perera was present.

There was a meeting on the 17th November, 1943. Before that meeting I went to the Baudha Mandiraya. I did that as I received a telegram from Kirineris asking us to meet there before going to the meeting of the Bus Company. I produce the telegram P17. Mr. Mivanapalana was at the Baudha Mandiraya and also Gunasekere, L. A. Perera, Arnolis Appu and others. Alice Wijeratne was not there, her husband was there. Mivana-
palana had acted for me in these matters before this. Somebody said
there that the Company were going behind their original agreement and 40
they were trying to give us money and not shares and we agreed that we
would not take anything but the shares and I was elected to be the

spokesman at the meeting. Having come to that decision we went to the meeting. At the meeting the Chair was taken by Dr. A. P. de Zoysa other Directors were also present.

Luncheon Interval.

(Sgd.) W. SANSONI,
District Judge.

24th June, 1946.

G. D. E. MALAWANA, Affirmed.

Examination (Contd.). At the meeting of the 17th November,
10 Dr. A. P. de Zoysa was in the chair. He said that the meeting was convened in order to find out as to what we should do with the money and that this company was a Ceylonese concern and was a powerful concern and in fact the biggest Ceylonese concern that English Companies will try to oust us, that in this Company 90 per cent. is given over to the agents for contracts and 10 per cent. would be given to the company. That after leaving all the expenses out of this 10 per cent. the balance would be distributed to the shareholders, and that the division could not be done in a day or two but it will take five years and that because it was war time only a negligible amount will be available. He further
20 said that after the war there will be a loss but no profit. Therefore he asked us to have sympathy on the company and take cash instead of shares. I said you are one like a saint, you are a member of the State Council and a learned doctor, that we had confidence in him and according to the promise made on the 6th we gave over the buses with the intention of taking shares but on that day I clearly made him understand that we were not prepared to take anything else but shares. I also said that besides I put the question whether I would be able to buy shares for cash. When I told him that he said that it could not be settled that day but it would be put for discussion by the directors and that I would be informed
30 later by letter. I said that will not materialise. I said it looks to me that not only would I not get shares for cash but even for our rights in our buses we will not get shares. I said I was not prepared to exchange my share even for a lac. I said in no instance would I take back my buses. I said we would take shares even if there were 90 per cent. profit, 10 per cent. profit or if there was no profit at all or even if there were losses we would take shares. Then Jayasena said do not expect anything out of the 90 per cent. I got up and then the others followed. It is not true that at that meeting I refused to become a share holder. That meeting was on the 17th November. I produce letter dated 18th
40 November, 1943 P18. I thought this was a fraud on the part of Mr. Zoysa. I was ill at the time and I instructed my manager to send back the cheque at once. I produce P19 copy of a letter dated 20th November, 1943. I received a reply dated 22-23 December, 1943 P20. I sent a letter P21 on the 5th January, 1944 to Mr. A. P. de Zoysa. I was still ill at the time. I received a reply dated 17th January which I produce marked P22.

No. 6
Plaintiff's
Evidence
G. D. E.
Malawana
Examina-
tion.
--continued.

No. 6
Plaintiff's
Evidence
G. D. E.
Malawana
Cross-exami-
nation.

Cross examined by Mr. Choksy.

The meeting of the 6th January which I attended was a meeting of all bus owners who were running buses on the Colombo-Kurunegala, Colombo-Kandy and branch roads. I cannot remember who presided at that meeting. That was the day on which the meeting of the greatest importance was held to all bus owners on that route. It was said that 5,000 shares were sold out and there was a balance of 4,000 odd and asked us to give our buses also to the company and the shares would be allotted amongst the bus owners. Details as to how buses were to be run were discussed. It was said that the company would give petrol. 10 The general idea was that 90 per cent. should go to the bus owners and 10 per cent. to the company and that a final decision was to be made later. Later on the bus service actually started operating. There were buses running earlier also. Those buses were running even before the 6th. I was not aware of the system in which the company ran its buses. There were no branch managers at that time. I think it is after the 17th November, 1943 that I learnt that they were running the buses on the branch manager system. I was aware in a certain branch where the 90 per cent. was divided among the bus owners of that particular branch. I did not inquire when they started having branch managers. It was 20 after the 17th I came to know but I do not know the date. Before the 17th the 90 per cent. was divided among the bus owners. That system continued for about six or seven months before the 17th November. I know nothing about it before the 17th November.

Q. I put it to you that the branch manager system had been in operation all along and was not a change introduced about the middle of November? The branch of which I am speaking that the Kurunegala-Kandy and subsidiary lines branch managers were appointed six months after the 17th November.

Even now I do not know if there were branch managers before the 30 17th November. It is not the fact that I and the other plaintiffs wanted to be branch managers. We were always expecting to get our shares; we did not know there was such a thing called branch managers. I cannot say about the other plaintiffs but I did not want to be appointed a branch manager.

Do you say that none of the plaintiffs in the other cases wanted shares only if they were appointed branch managers?

That is not a question to be asked from me.

At the meeting of the 17th November there was no talk regarding the system of branch managers. There was not even at the earlier meeting 40 of the 6th. Jayasena made the remark about the 90 per cent. because I said that we wanted the shares both for the 90 per cent. or the 10 per cent. or even if there were losses. There was no disagreement between me and the other co-plaintiffs. There was no disagreement between me and the co-plaintiffs on one side and Jayasena on the other side. I

immediately got up at Jayasena's remark and went away. We did not agree; we were completely against it. When I got up the others also got up cursing. That was the end of the meeting. The next thing I got was a letter enclosing the cheque.

No. 6
Plaintiff's
Evidence
G. D. E.
Malawana
Cross-exami-
nation.
—continued.

Re-examined.

I knew about one branch. That was the K. B. branch Company. Owners told me about it. There was a charge in the Kurunegala Courts against that branch manager. He was paying the shares for some time and after that he stopped it. K. M. Perera was the branch manager of that G. branch. He had two buses on that route and he sold them to me. After the company was formed he transferred in his name two buses belonging to some poor people. That was all the buses he owned.

G. D. E.
Malawana
Re-examina-
tion.

I am the plaintiff in case No. 15930. My buses were valued on the 1st February at Rs. 9,250. I am also claiming damages in Rs. 3,000 a month. My buses ran from Kurunegala to Colombo.

(I intimate to Mr. Wickremenayake that the assessment of his damages at Rs. 750 a month would be on a false basis as that would not be the earning capacity of a bus after the route licence was given to the defendant company. He therefore states he is prepared to restrict his claim to such amount as he would be entitled to for the shares and profits on the figures in the balance sheet P11. This will be the basis of assessment of damages in all the cases.

Mr. Choksy states that in view of this statement he does not want to cross-examine any of the plaintiffs on the question of damages).

(Sgd.) W. SANSONI,
District Judge.

A. MIVANAPALANA. Affirmed
Proctor, Supreme Court.

A. Mivana-
palana
Examina-
tion.

I have been associating in bus services in some form or other for a considerable time. When the new Ordinance came into operation Mr. Nelson had my assistance. At most of the meetings which he called up I was present. Under the new Ordinance private individuals were not allowed to run buses but they had to join a company and a particular company was allowed the route licence. Only one operator was allowed on one route. I assisted in the promotion of quite a number of the companies. Individual bus owners gave up their buses and the route licence to the company that got the licence for the route and got in exchange shares in the company. That was the general practice throughout the Island. In the matter of the Sri Lanka Company I acted for Malawana. I have no recollection that I had been asked to represent him before Mr. Nelson. I was not present at the meeting of December and January when the details were discussed between the bus owners of this particular company.

No. 6
Plaintiff's
Evidence
A. Mivana-
palana
Examina-
tion.
—continued.

L. A. Perera got me to draft a letter once. Shown P8. This letter was drafted by me. There he says that he gave his buses for shares and he wanted to know how the bus company was run. His grievance was that he did not get any shares or dividends and he was not told anything and he knew nothing. He came to me as a share holder of the company. I remember a meeting of certain bus owners in my office on the 17th November. I can remember the discussion that took place. The person who got the meeting called came themselves and others came. The meeting was held because it was known that the Sri Lanka Bus Company was going to hold a meeting to interview certain people who were dis-10 content in regard to the Sri Lanka shares. Those persons came a hour or two earlier and had a meeting. That man was Kirineris. A number of them came. Perhaps I may have a note of those who came. I have two lists ; one of those who were present on 17-11-43. They were :

W. A. Arnolis Appuhamy	N. M. Mathes Hamy
G. D. E. Malawana	Kirineris Perera
H. M. J. Bandara	M. G. T. Nanayakara
L. A. Perera	R. A. Sirisena

The husband of Alice Wijeratne came later. I made this note of the people present at the beginning ; he came at the end. They were wanting²⁰ to decide what they should do when they get to the conference and they were trying to find out what was going to happen at the conference. Some of them expected some encouragement from one of the directors of the company that they would get shares and that would be an end of the matter. Others had not gone to see that particular director and they did not know what would happen but the decision was that they were going to insist on getting shares and that any effort to pay them off and send them home with a little money would not be welcome to anyone of them. I said that the correspondence showed that at least where some of them were concerned there was an effort to pay them off. They³⁰ showed me the letters and I said that appeared from the letters. They went to the meeting with that decision to ask for shares and not to be satisfied with cash. They were asking who should speak whether they should all speak. After a little conference one or two of them said they could not trust to talking that they would lose their temper. My recollection is that Mr. Malawana undertook to do the talking. He volunteered to do the talking and that satisfied the others.

A. Mivana-
palana
Cross-exami-
nation.

Cross-examined by Mr. Choksy.

I am familiar with the Nelson plan and the plan underlying that Ordinance. Under that Ordinance it is an exclusive route licence which⁴⁰ is issued to one individual or a company. Once such a licence is issued none of the other people who were previously plying buses on that route could ply their buses on that route. The buses would become a loss unless they can sell the bus or convert it to a lorry. It was a very paying proposition to sell off because there was a great demand ; bus companies

were prepared to pay fabulous sums if they could get buses to run their service. It was not necessary to tell the directors that they could buy the buses. He would lose the income by not plying the buses. Buses would depreciate by result of the non-user. The point I wanted to make was this if the owner sold the bus to somebody the company would say you have no bus we cannot give shares ; the only way to get the shares was to keep the bus and what I wanted to show was that process would involve loss. It would be much more profitable—it is better to have shares. It is like exchanging a perennial spring for a port of water.

No. 6
Plaintiff's
Evidence
A. Mivana-
palama
Cross-exami-
nation.
—continued.

10 I was familiar with the particular routes. M. Jayasena and Muhamdiram B. J. Fernando owned about as much buses as the Little Service Bus Company. If the three of them joined in this almost all the buses would have come in. The result of the combination of those three would mean that the remaining bus owners would be off the road. Unless Mr. Nelson was prepared to allow the people on the branch route to come on the Kandy Road and allow a little of the route licence of the Sri Lanka Bus route. A number of people joined the company. About 4 or 5 joined. Others had been allotted shares afterwards.

When L. A. Perera came to me to draft P8 he said he did not know
20 the way the company was running. He said their knowledge was of a negative kind they knew nothing positive of the company. He said he did not get dividends. A number of people came and told me different things at various times. I drafted this letter of the 23rd January for him. I had a conversation with him to find out the facts. I only recollect that he told me he had been promised shares when he signed the papers and gave over the bus. I do not recollect anybody telling me there was a meeting before 23rd January. Each individual told me that he and one or two other directors of the company and one or two other owners met in groups but never in the shape of a meeting. Whenever
30 they met there were one or two of them and some of the directors. I have no recollection of anyone telling me about a meeting. I knew of one meeting when a large number of people had a meeting not only of this route but of another route as well. The men told me that when they gave over the buses and signed papers of transfer they were promised shares. L. A. Perera told me that on the day I drafted the letter. That was in reference to other people. With regard to himself I have no recollection that he did not say he signed papers. He said certain other people had signed documents and transferred the buses. A number of these people came at different times. My recollection of this group of
40 plaintiffs came to me very much later. L. A. Perera was the first of this group who came to me. The others saw me later. I was only aware that some of them met the directors of the company or some of the directors I think long after this ; some of them referred to a meeting at which not all the route owners but a number of them were present. They were very clear about one thing that there was never a meeting at which all people who plied buses on the route were present with the directors. Meetings of groups happened together with the directors. They mentioned names—Dr. de Zoysa, Jayasena, Obeysekera the Secretary, Donald

No. 6
Plaintiff's
Evidence
A. Mivana-
palana
Cross-exami-
nation.
—continued.

Perera the Manager. The presence of other directors was mentioned that was on the 17th when two other directors were present for a few minutes and they disappeared. They did not talk. The proceedings were among the remaining directors.

There was a meeting in my office just before the meeting of this group and the directors of the Sri Lanka Bus Company. One of two people had seen a particular director and had some assurance that some kind of assistance will be provided by that director at the meeting to achieve their object. The others listened to what these people had to say and they had no idea as to what was going to happen and they asked me what was probable. On the 17th November they did not give me any information what had transpired at an earlier meeting. I cannot say what with precision; I have no recollection on that point. On 17th November when they met me I cannot say whether they gave any indication of any meeting they had in January, 1943 but I have no recollection of dates. They told me that they had met the directors and what had transpired at that meeting. Some other person who came in that group has got shares since. The reasons given by most of them were that most of this was due to past displeasure in the days of individual bus running. 20

There were tussles between some of these and Jayasena and that shares were being withheld after taking the buses owing to past displeasure. I have no personal knowledge even now but there is a talk of a system. I was told it is run in a particular way. That is the branch manager system. It had been mentioned even before 17th November. They had discussed it even before and they knew it that I knew it earlier therefore there was no necessity to mention it on the 17th November. Everyone of them spoke to me on the 17th November. They said it was run in a manner which deprived the shareholders of their dues. He said he was not a share holder. He had no grievance that the people who are now share holders were being badly treated by the company. Their grievance was that they had not been admitted to the share holdership. They did not discuss in that way whether they desired to be a branch manager. They said that share holders who were not branch managers were losers in a large scale. They said that system was iniquitous to the share holders. The members of this group were aware that the buses were being run on the branch manager system. People who were round about the Colombo-Kandy Road knew. I cannot say if some of those who saw me on the 17th November were ignorant. I thought everybody knew because it was discussed. It is not at all times when the discussion took place that everybody was present. Some came in later some went away earlier. 30

A. Mivana-
palana
Re-examina-
tion.

Re-examined.

Mr. Malawana authorised me to represent him before Mr. Nelson.

On the 17th some of the bus owners told me what had transpired when they met the directors as a body. They said that shares had been

promised for routes and buses. There were tussles between individuals and M. J. There was a tussle between Malawana and Jayasena.

To Court :

Between the 17th and 23rd I met a number of these people. Some of them came to my office just after the meeting of the 17th. Malawana came. He said when he went there to the meeting Jayasena was there that for a while Muhandiram B. J. Fernando and some other director was there but the two of them went away. Jayasena asked a peon to call Dr. A. P. de Zoysa. Dr. A. P. de Zoysa came in then Jayasena asked
 10 Dr. Zoysa to speak then Dr. Zoysa made a speech in which he said the bus business was the only big business in the hands of Ceylonese and foreigners were casting greedy eyes at it, that companies must build up reserves and at war time it is difficult to pay dividends and that reserves must be very large so much so that it is not at all likely that they would be able to pay dividends at war time and for 3 or 4 years more they would not be able to pay and even if they pay it would be very small and not at all and in the circumstances not to be bothered in retaining shares in the company and so they should take money away and do business in place of their rights. Mr. Malawana said M. Jayasena said something.
 20 He said he made some reference to his grey hairs and said he was not such a fool and said that he must have shares or nothing at all. He said they insisted on shares and they all insisted on shares.

Somebody said they could not trust themselves to speak and so got out immediately.

(Sgd.) W. SANSONI,

D. J.

W. D. R. GUNASEKERE, affirmed, 47, Landed Proprietor, Kadugannawa.

I am a bus owner. I had three buses. I received a letter asking
 30 me to come for a meeting on the 21st December, I went to that meeting. At that meeting it was decided to give over our buses and take shares. There were several bus owners at that meeting. All the plaintiffs in these cases were present. Alice Wijeratne's husband was also present. Dr. A. P. de Zoysa took the chair. B. J. Fernando, Jayasena, S. A. Samarasinghe were the other directors present. Donald Perera Manager, Obeysekera the Secretary were also present. Francis Alwis, W. K. Perera were also present. A prospectus was distributed. Shown P3. This was the prospectus that was shown round. I was present at the meeting on 6-1-43. I received a notice asking me to come for that
 40 meeting. That notice was signed by Obeysekera. I went to that meeting. We were informed that when our buses were given to the company we will be given shares. They said that buses will be valued and according to the value we will get shares. This was told by Dr. A. P. de Zoysa. At the second meeting Jayasena said so. Other directors were also present at the time. At the meeting no one was fixed on as assessors but Donald Perera and P. C. Fernando came as assessors. My

No. 6
 Plaintiff's
 Evidence
 A. Mivana-
 palana
 Re-examina-
 tion.
 —continued.

W. D. R.
 Gunasekera
 Examination.

No. 6
Plaintiff's
Evidence
W. D. R.
Gunasekera
Examina-
tion.
—continued.

buses were assessed at Rs. 8,000. I received from Donald Perera a document which I produce P23. I gave over buses on the 1st February. After that I did not get any shares or dividends. Then I forwarded a letter to the Director of Transport. I produce that marked P24. I sent a copy of that to the Minister. That was referred to the bus company for their observations and I received a reply dated 27th May P25 from the bus company.

I replied by letter dated 5th June P26. I received a reply on the 9th June P27. I heard nothing after the next meeting. I wrote on the 21st August letter P28. He replied by letter dated 7th September 1943 P29. No reply was sent so I invited attention by P30 on the 15th September. I received a reply P31 on 20-9-43. As the share certificate was not coming I got a proctor to write a letter P32 dated 13-10-43. I got no reply. Then I was summoned to a meeting on the 17th November. Before that meeting I got a letter asking me to come. Before that meeting there was a meeting of some of the owners who were going there. On the 12th November I got a letter P33. Before the interview I and the other bus owners met at the Baudha Mandiraya. I got a telegram and went there. Mr. Mivanapalana was there. Before going to the meeting of the company we decided what should be done. We decided to take shares and not to accept cash. Dr. A. P. de Zoysa was at the meeting. Jayasena was there. W. B. Fernando, B. J. Fernando, Francis Alwis and several other bus owners were there. A. P. de Zoysa made a speech. The gist of his speech was to try to persuade us to take cash for our buses. Mr. Malawana made a speech on our behalf. He insisted on shares. The meeting broke up. There was nobody there who agreed to take cash.

I am claiming shares to the value of the assessment of my buses and damages.

W. D. R.
Gunasekera
Cross-exami-
nation.

Cross-examined by Mr. Choksy.

30

I do not know that the Company was running on the branch manager system. I still do not know of it. I do not know how they run. I have been meeting and discussing about these things with the other plaintiffs. At none of those discussions did I hear that the defendant company was running the buses on the branch manager system. I do not know how the company runs this business. I and a number of others of this group met at Mr. Mivanapalana's office before we went for the meeting. The word branch manager was not even mentioned there. The question of the management of this company on the branch manager system was not discussed at all then. I did not know that branch managers keep 90 per cent. of the takings and give only 10 per cent. to the company. From Mr. Mivanapalana's I went to the meeting.

Q. Did anyone tell anything about the 90 per cent. ?

Jayasena said to work the buses take 90 per cent. and give 10 per cent. to the company.

That is what he said. I am sure. We were not agreeable. We wanted shares.

You were not agreeable to his suggestion of keeping 90 per cent. and giving 10 per cent. to the Company? We wanted shares for 100 per cent. Even if it was run at a loss we wanted shares and nothing else.

You were not prepared nor was anyone else prepared to take 90 per cent. of the collections and give the 10 per cent. to the company? No.

10 All got up and went away when that suggestion was made. We said we were not agreeable and went away. We said we wanted shares for the 90 per cent. for the 10 per cent. and we said we would pay the amount of the loss.

Q. In November, 1943 were there any people in the company who were taking 90 per cent. and giving 10 per cent. to the Company? I do not know that.

Even now you do not know whether anybody is doing that? I do not know on what system the company runs.

I have not made any enquiries to see on what system the company 20 is run. No one of the other plaintiffs nor I know how the company is run. I have asked them and they have not been able to tell me. There was a meeting on the 6th January. There was a talk about keeping the 90 per cent. and each individual bus owner running his buses but we did not agree to that. I cannot remember who said that. No one agreed to it. The meeting of December, 1942 I attended. There was no talk about how the buses were to be run at that meeting. It was at that meeting it was decided that the company should take the buses and give us shares. There were several talks at that meeting but what we were concerned about was to get our shares. We were not agreeable 30 to any suggestion whereby the owners of the buses should keep 90 per cent. and give the company 10 per cent. None of the other members of this group agreed to such a suggestion.

Re-examined.

At the meeting of 6th January I signed a form on a 50 cent stamp.

(Sgd.) W. SANSONI,
District Judge.

Case postponed for tomorrow.

(Sgd.) W. SANSONI,
District Judge.

No. 6
Plaintiff's
Evidence
W. D. R.
Gunasekera
Cross-exami-
nation.
—continued.

W. D. R.
Gunasekera
Re-examina-
tion.

Counsel as yesterday.

P. B. RANAWEERA, affirmed, 45, Native Physician, Kapitigalle.

I am the husband of Alice Wijeratne who was the owner of two motor buses of which one was only running. Alice Wijeratne got a notice to attend a meeting to be held on the 21st December, 1942. I acted on behalf of my wife in these matters. I went to the meeting and the other plaintiffs in the seven cases were present at that meeting. Malawana was there. L. A. Perera was there. At that meeting it was decided that the company was to be formed under the name of Sri Lanka Omnibus Co. 10 and we had to give over our buses. We promised to give our buses only if we were made shareholders. A Prospectus was shown to us that day.

I also received a notice to attend a meeting on 6th January, 1943 and I attended the meeting on behalf of my wife. We were given a form to be signed at that meeting and we signed the form. (Shown P4). This is the form. It was stated at that meeting that the directors will be appointed and the way in which the company was to be worked. With regard to our buses they asked whether we wanted to sell them and we said no, we wanted shares in the company. No details were given to us as to the extent to which we were to be allotted shares. After that we 20 gave over our buses. My bus was valued. The Branch Manager of the Company came to assess the buses. I received a document dated 1-2-43 signed by Donald Perera Secretary of the Company P34. I questioned that valuation saying it was not enough and I received P35 dated 4-2-43. Thereafter the bus was being run by the Company and in April, 1943 my wife wrote asking for the shares and the profits. She received reply dated 3-4-43 P36.

My wife then wrote asking for a loan against the dividend (original called for—not produced). She received P37 dated 21-5-43. Before P37 was sent to her there was a Directors' meeting. (Mr. Wickremenayake 30 calls for the minute Book—Mr. Wickremenayake marks copy of the minutes of the meeting held on 30-3-43 P38).

The next intimation was a letter dated 12-11-43 P39. I was surprised when I got this letter.

I attended the meeting on the 17th November. Before attending it on the 17th I went to the Baudha Mandiraya as I received a letter asking me to come there. When I went there M. Jayasena, Zoysa, Donald Perera and others were there. The Baudha Mandiraya is in Norris road. I know Mr. Mivanapalana's office. His office is in Baudha Mandiraya. Jayasena and others whom I mentioned just now were there. There was no talk 40 there. I went there but left hurriedly and I went home. I went to the office of the Defendant Company but not on that day. My father was ill that day I left hurriedly as I had to go to the hospital.

On 19-11-45 I sent the letter P40 to the company. I got no reply. I never agreed at any time to take cash for my bus. Nor did I refuse to take shares. I always insisted on being a share holder of the Company.

Cross-examined

No. 6
Plaintiff's
Evidence
P. B. Rana-
weera
Cross-exami-
nation

At the first meeting in December, 1942 the formation of a company to run buses on this route was discussed and we were informed that a company had been formed for that purpose and we were asked whether we would give our buses to the Company. I was told I could either take cash or shares in the company for the buses. I was also told how the company was going to be worked and other details. I was not told at that meeting how the company was going to be worked. I was told that the Company was going to be worked by the appointment of branch
10 managers. I do not know A. P. de Zoysa I came to know later who presided at that meeting, it was Dr. A. P. de Zoysa. Almost at the same time others there told me that. At that meeting Dr. Zoysa explained how the Company was going to be worked, by the appointment of branch managers and so on and if we were willing to take shares they were willing to give shares. He did not say if any one did not want shares they were willing to pay cash. Nothing else was said.

I handed over my bus about 1st February. On the route from Galapitamada to Kegalle no other buses ran except mine. I cannot say whether on the Colombo-Kandy and Kurunegala route there were any
20 other buses running on behalf of the Company before I gave my bus. After I gave my bus the Company ran my bus also.

They ran it on the Galapitamada-Kegalle and Colombo route. Samarasinghe was the manager of that branch. He was the man who ran the Tarzan bus service. I cannot say whether as Branch Manager he ran only his buses. I know that my bus was worked by him as Branch Manager on that route. I cannot say what he was paid as Branch Manager. Even now I do not know that. I never heard at any time on what basis the various branch managers were running those different
30 buses. I inquired from the plaintiffs in the other cases on what terms and conditions the branch managers were working they did not know. I do not know if those plaintiffs knew on what basis the branch managers were appointed. Even after I came to court I have not been able to find out what percentage of the earnings those managers took. I did not hear that they took 90 per cent. and gave 10 per cent. to the company. Yesterday there was a talk like that. Kirineris Perera told me yesterday. After the court adjourned yesterday I heard from him that the branch managers were getting 90 per cent. of the earnings. That was the first time I heard that. He also said that the other bus owners were not agreeable to that. The first time I heard of that scheme was yesterday.

40 I was not present at the meeting held on 17-11 by the Company. I did not go to the Company's office after November. I did not try to find out what happened at the meeting of the 17th November. Up to now I do not know what happened at that meeting. My wife did not attend that meeting on the 17th. She did not go to Mivanapalana's office that day. She has not attended any of their meetings.

No. 6
Plaintiff's
Evidence
P. B. Rana-
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Cross-exami-
nation
—continued.

(Shown P40). I think my wife's brother drafted this. I did not draft it. I had nothing to do with this letter. After 17-11 I have been to Mivanapalana's office. I went about three days after the 17th. Mivanapalana did not tell me to send a letter on certain lines. My wife did not tell me she had any interview with A. P. de Zoysa or Jayasena. I never heard about the things mentioned in that letter, about the interview with Mr. de Zoysa and so on. About a month after this letter she told me about it and I told her we must retain the ownership of the buses. I told her that because we wanted to become share holders and did not want to sell our buses. My wife told me about after that she had written 10 for a loan and it is after that that she wrote this letter. My wife's brother had attended to these matters.

I could not attend the November meeting because I had to go to the hospital. I cannot say whether my wife's brother went to the meeting. I think he went for the meeting. He was managing my wife's bus. He did not tell me that he went to that meeting nor did my wife tell me that her brother had attended that meeting. She did not know what had transpired at that meeting. On the 17th when I returned home my wife did not ask me what happened at the meeting. When I left that morning I said that I had to attend the hospital and had also received a letter to 20 attend a meeting. Owing to my father's illness I could not attend any meeting that day.

Re-examined Nil.

(Sgd.) W. SANSONI,
District Judge.

Arnolis
Appuhamy
Examination

ARNOLIS APPUHAMY, affirmed

I am the plaintiff in 15929. I had operating on this line two buses. I attended a meeting of the company on 21st December. The directors were present Dr. de Zoysa, M. Jayasena, V. J. Fernando and L. S. Fernando and others. The chair was taken by Dr. Zoysa. At that meeting we 30 were asked to join the company which was being formed as the Sri Lanka Omnibus Co. We were asked to give up our buses and route licences to the Company. We were to get in exchange shares in the company. I was shown a prospectus that day and told there were 4,100 shares outstanding. Then I received a notice for a meeting to be held on 6th January and asking me to bring the certificate of registration. I attended that meeting and took my certificate of registration. I signed a form that day. It was a form in English and Sinhalese. I signed on a fifty-cent stamp. We signed that form making us shareholders in the company and to enable the Company to draw the petrol coupons. 40

After that they said they would value the buses. They came and assessed mine and I was asked to give over the buses to the company. My buses were assessed at Rs. 3,500 together with the route. They were taken over by the Company on 17-1. I produce the receipt for one bus P41 and it is dated 17-1.

After I gave over my buses I did not get any shares or any dividends. I sent a petition signed with others to the Director of Motor Transport and the Minister of Local Administration. P24, P24A.

No. 6
Plaintiff's
Evidence
Arnolis
Appuhamy
Examination
—continued.

On 27-5 I received a letter from the company P42 together with this letter I got a cheque for Rs. 3,570. I returned the cheque saying I was not prepared to take money and wanted shares. P43. I received reply dated 16-6 P44.

In between I had certain correspondence with the Company in regard to some licences and taxes.

10 (Answer put to witness). That I refused to take shares on the 17th November and wanted payment is not true. (Shown minutes of 17-11) I was present at the meeting of the 17th although the minutes say I was not there. I did not offer to take payment I wanted shares.

Cross-examined.

At the meeting of December, 1942 I was told that as the company had been formed I would not be able to run my buses as before and it was suggested that I should hand over my buses to the company and they would give shares. It was not said they would give us cash or shares as desired by us. Mr. de Zoysa spoke at that meeting. He spoke in
20 Sinhalese. I was able to follow him. There was no talk at that meeting about branch managers. After 17-11 I found out that there were branch managers appointed. On that day the 17th they said that branch managers had been appointed. I do not know whether they had been appointed months before the 17th. I first heard of them on the 17th. The terms and conditions under which they were appointed branch managers were not explained at that meeting. Nothing was said about 90 per cent. and 10 per cent. at the meeting. At the meeting of 6th
30 January it was mentioned by Jayasena that the 90 per cent. would be distributed among the bus owners and the 10 per cent. given to the shareholders of the company and the shareholders would get the dividend out of the 90 per cent. at the end of the year. The 90 per cent. was to be divided among the owners of the buses in the branch according to the value of their buses. Because it was said that the distribution would be according to the shares I agreed. I thought that I would get on my shares both from the 90 per cent. and from the 10 per cent. and I was agreeable to that scheme.

Arnolis
Appuhamy
Cross-exami-
nation

If each manager was to get the whole of the 90 per cent. I would not have agreed to such a scheme. I do not know whether at any time the company decided that the branch managers were to take the 90 per
40 cent., but I heard that the company had come to some such decision. I was told that on the 17th November. At the meeting of the 17th it was stated that 90 per cent. would be given to the branch managers only and not be distributed among the owners of the buses, running in that service. I was not agreeable to that at all. None of the bus owners who are plaintiffs in these cases agreed to that scheme. That scheme was stated by Jayasena and Dr. Zoysa at the meeting on the 17th. No chits were

No. 6
Plaintiff's
Evidence
Arnolis
Appuhamy
Cross-exami-
nation
—continued.

distributed to be signed at that meeting by those who were agreeable to that scheme. At any time no such paper was distributed to be signed by those who were agreeable to that. That scheme was explained to us on 17th November and we all said we were not agreeable to such a scheme. We wanted shares only on the basis that the various bus owners should be given a proportion of the 90 per cent. Similarly the other plaintiffs were also agreeable only if they were given a portion of the 90 per cent. Jayasena and Zoysa were not agreeable to the bus owners getting a share of the 90 per cent. Malawana spoke on our behalf. He said that we always considered you. Mr. de Zoysa, as a public spirited man and had 10 confidence in him as a State Councillor and also as he poses to be a saintly person and he was trying to put us into trouble and asked him to look into the matter carefully and give us relief. After that Malawana walked out and others followed. What Malawana insisted on was that the bus owners should be given shares. He also wanted Mr. de Zoysa to reconsider the matter, that is, as regards giving us a share in the 90 per cent. as well as in the 10 per cent.

(Sgd.) W. SANSONI,
District Judge.

J. Bandara
Examination

J. BANDARA, affirmed

20

I was the owner of bus X9595 and another bus. I did not go to the meeting of 21st December. I attended the meeting of 6th January.

At that meeting I agreed to join the company and give all the buses to the company and to work in the company. I was to get shares for the value of my buses. I signed a form that day. P4 is the form.

After that my buses were valued and taken over by the company on 2-2-43. I received P45 as the receipt. I had no further correspondence with the company. I received a letter from the company on 12-11. saying as intimated to me there was a sum of Rs. 5,000 lying to my credit in the company.

30

I went to the meeting of the 17th November. Before going there I went to the Baudha Mandiraya. I met Mivanapalana there and there was a discussion with the bus owners gathered there. After that discussion we went to the meeting of the company to become shareholders and to take shares in the company.

At the meeting of the company Dr. de Zoysa detailed to us the system on which the company was to be worked. After him Malawana spoke on our behalf. In view of what Dr. de Zoysa said we were all willing to take shares.

(Mr. Wickremenayake marks letter of 12-11 P46). Along with that 40 letter I sent a letter to Dr. de Zoysa dated 3-11 P47. I received only an acknowledgement to it. Receipt sent with P46 is marked by counsel P48.

Cross-examined.

No. 6
Plaintiff's
Evidence
J. Bandura
Cross-exami-
nation

The letter P47 of 3-12 was drafted for me by an employee of mine. It was typed in Mivanapalana's office. The man who drafted it is an educated man who usually writes letters for me. On 17-11 I explained to Mivanapalana about these letters. When P46 was typed in his office I did not explain anything to Mivanapalana, he was not there that day. Even prior to that I did not explain anything to him and I had not told him anything prior to 17th November. Before the 17th November I cannot remember telling Mivanapalana about the meetings of December 10 and 6th January. As regard the management of the company and their promise made at the meetings I did not discuss them with Mivanapalana. I cannot say whether anyone else discussed them with him. Those who came before me to his office on the day of the meeting may have discussed matters with him, I went to his office and immediately left for Victoria Buildings where the meeting of the company was being held. I did not know at the time that the company was working the company on the branch manager system at the time. I knew that later. I came to know of it after they took our buses. My buses were handed over on 2nd February. It was a long time after 2nd February that I came to know 20 that they were working on the branch manager system. It would be four or five months after that. I came to know that the managers were to get 90 per cent. and that the owners were not to get any share of that. That is what Jayasena told us and he told us that on the 17th November at the meeting. I heard that they had been working on the branch manager system for some months prior to 17th November.

I cannot say on which branch my buses were run after 2nd February. Up to November I did not get any share out of the 90 per cent. I got nothing. Nor did other bus owners the plaintiffs in the other cases get any proportion out of the 90 per cent. to my knowledge. There was no 30 dissatisfaction owing to that. We were not concerned and we were not displeased over that, because after we got our shares we could question about the working. I was prepared to become a shareholder on the basis of the 90 per cent. being given to the branch managers and nothing being given to the bus owners because I would have discussed about it after I became a shareholder. Before 17th November I or the plaintiffs did not discuss about the 90 per cent. and the 10 per cent. with the directors. I did not try to persuade Dr. de Zoysa or Jayasena to give us a share of the 90 per cent. On the 17th November we had stated that we wanted a portion of the 90 per cent. and the 10 per cent. Before the 40 17th I did not try to persuade anyone to get us a share of the 90 per cent. or a share of the 10 per cent. I do not know whether any of the other plaintiffs tried to persuade Dr. de Zoysa or Jayasena. I started associating with the other plaintiffs only after these cases and did not know them before that. I did not try to persuade Dr. de Zoysa or Jayasena to change that system. I spoke about getting my shares in the company. At any time I did not speak about getting my share of the 90 per cent. Before the meeting on 17th November at Mivanapalana's office we did not discuss

No. 6
Plaintiff's
Evidence
J. Bandara
Cross-exami-
nation
—continued.

about the 90 per cent. because as I said before I came late and went at once to the company's meeting. I did not find out from the others what they had discussed at Mivanapalana's office. I did not try to find that out after the meeting at the company's office.

At the meeting in the company's office Malawana spoke and said we should get shares in the 90 per cent. and in the 10 per cent. and bear any losses and that we had confidence in Dr. de Zoysa and expected that he would do the right thing.

Then Jayasena said do not expect anything out of the 90 per cent. Dr. de Zoysa did not say that. Malawana said if there was any profit the bus owners should also get a share out of the 90 per cent. As to whether Malawana asked Dr. Zoysa to reconsider that as he (Malawana) was disagreeable to that, I do not know.

J. Bandara
Re-examina-
tion

Re-examined.

There was a talk at that meeting that we could not expect anything out of the 90 per cent. As a result of that no one stated he did not want shares, they all wanted shares.

(Sgd.) W. SANSONI,
District Judge.

Martin
Appuhamy
Examination

MARTIN APPUHAMY, affirmed

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Plaintiff in 15931.

Paulis is my brother. I have been looking after his interests also in the bus business.

I went to the meeting of the 21st December representing my brother. At the meeting it was stated that a company is to be formed and all owners should join it and they could not run their buses individually. I agreed to hand over the buses and to take shares in the company. A prospectus was not shown. No paper of any sort was shown that day. I attended the meeting of the 6th January and on that day there was a talk to join the company. I signed a form that day in English and Sinhalese.

(Shown P4). This is the form. I took it home and got my brother to sign it.

Thereafter the buses were assessed and a receipt given (P49) and the buses taken over. Thereafter my brother has had no correspondence with the company to my knowledge.

I attended the meeting of 17th November. Before going to that meeting I went to the Baudha Mandiraya. Kirineris had sent me a telegram to come there and when I went there were other bus owners there.

Mivanapalana was there and we had a discussion. We decided to give the buses and take shares for the buses and nothing else. After that we went to the meeting. At the meeting nobody refused to take shares. On our behalf Malawana spoke. I remember Jayasena saying that we could not expect anything out of the 90 per cent. profits. As a result of that no one said they did not want shares.

Cross-examined.

At the meeting of 17-11 there was a talk about the 90 per cent. and the 10 per cent. The talk was that the 90 per cent. would be distributed among the bus owners and the company was to take 10 per cent. Mr. de Zoysa said that. Then Jayasena said do not expect anything out of the 90 per cent. but we might get something out of the 10 per cent. We understood by what Dr. de Zoysa said that everyone of the shareholders who are bus owners would get shares out of the 90 per cent. I understood him to say that the 90 per cent. would be shared by the bus owners. He said that the shareholders would get both from the 90 per cent. and the 10 per cent. Jayasena said do not expect to get anything out of the 90 per cent. We were agreeable to become shareholders in spite of that. I mean that even on the basis of Jayasena's suggestion we were agreeable to become shareholders. I do not know about all, but I agreed. I cannot say about the others. I did not say that I was agreeable to accept shares even on that basis, but I was agreeable. When Malawana spoke he said that even if we were not to get shares out of the 90 per cent. we were agreeable to take shares. No one said that he would consider and let them know later. Malawana said that he was not agreeable to be a shareholder on that basis. When Jayasena said do not expect anything out of the 90 per cent. no one spoke and we got up and went away. Malawana did not say that even on Jayasena's basis we were agreeable to become shareholders, we got up and came away at that stage. We were displeased at that remark of Jayasena. We were expecting to share in the 90 per cent. and when that remark was made we left the place. It is now agreed by counsel that it is not necessary to call the plaintiffs in every one of these cases and counsel agree that the evidence recorded in this case will be read as evidence in the whole series of cases including 16290 and 16291.

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(Sgd.) W. SANSONI,
District Judge.

Mr. Wickremenayake closes his case reading P1 to P49.

Mr. Choksy calls :

A. P. DE ZOYSA, affirmed

I am a Doctor of Philosophy and a Member of the State Council. I am a Barrister-at-Law and an Advocate of the Supreme Court. I was also a Member of the Municipal Council on the relevant dates.

I am the Chairman of the Board of Directors of the Sri Lanka Omnibus Co. which was incorporated in November, 1942. This company was formed to get the exclusive route licence for certain routes under the New Omnibus Service Licensing Ordinance. Once the company was incorporated it would have had the exclusive right to ply buses along those routes. The licence was in fact issued to the company and for the purpose of obtaining that licence we had to obtain the consent of various bus owners on that road.

No. 6
Plaintiff's
Evidence
Mariin
Appulhamy
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nation

No. 7
Defendant's
Evidence
A. P. de
Zoysa
Examination

No. 7
 Defendant's
 Evidence
 A. P. de
 Zoysa
 Examination
 —continued.

(Shown P4). The signatures were obtained on forms like this from various bus owners who previously plied their buses on that route. These forms were issued specially to ensure that these bus owners would not go to other companies and to ensure that they gave their consent to our company because at that time there were others trying to obtain route licences to the same route. If we managed to get the majority of consents we would get the route licence. I believe these forms were taken to the Commissioner of Motor Transport after they were signed in order to show him that we had the majority of consents. I do not think we got them back from him.

10

I cannot say whether under the New Ordinance the exclusive route licence had to start from 1st January, 1943, but I think the licence was really granted later.

There was a meeting of bus owners on 21st December, 1942 at which I presided and I was the spokesman. At that meeting it was generally explained to them the necessity of forming a company. My company had already been incorporated in fact and I explained the general scheme under the Ordinance and how we were going to work it. I told them that the company had been formed and what the Directors had to do and so on. I may have also told them about the shares—I think I read 20 the Memorandum of Association at the meeting. Copies of the Prospectus P3 were handed over.

I cannot say whether some of the parties who were present were the plaintiffs in the other cases, they may have been there.

Generally they agreed that the company should be formed and that they would join the company. There was no show of hands because there was no opposition. It was not a matter for putting to the vote, they had all come and we took it for granted that they were all agreeable to become shareholders in the company. I cannot remember any dissenting voice.

There was another meeting on 6th January I think—I cannot 30 remember the dates. There were several meetings and I was absent from a few of them, but when I was free I attended some meetings.

I cannot remember attending a meeting a few days after the meeting in December but I remember there was a meeting which I specially remember because that was not a meeting of the Board of Directors. There had been several letters sent by people who wanted shares and I had asked the Secretary to get them to come and they came and I explained the situation to them. I cannot remember the date of that meeting. That was many months after the December meeting. It may have been in November, 1943. That was a meeting of the bus owners who had no 40 shares at that time in the company and I had to explain to them that the company has been formed on this basis—that agencies were to be granted on a basis of 90 per cent. of the gross income to go to the agent and the other 10 per cent. to go to the shareholders. They were also told that they could take shares if they were willing to accept those terms.

(To Court : Why did you take 12 months to do that ? They were hesitating, they were trying to form a company of their own against this company. I cannot say on what date the licence was issued to my company).

No. 7
Defendant's
Evidence
A. P. de
Zoysa
Examination
—continued.

After we got the forms from the people who were ready to join the company then each party wanted to run his own bus and of the proceeds they said they would give a share to the company. Then I had to explain that these companies were being formed to avoid that very thing, that is to avoid each man running a bus himself and taking the collection, and
 10 the company had decided to run the buses and not to allow each man to run his bus. We had the buses but no capital and that matter was discussed by us and we thought here are experienced people in the bus business and we decided to ask them to take up the agencies of the company and run the buses and to give a certain amount 10 per cent. to the company. The 90 per cent. was to be taken by the branch managers out of which they had to pay the drivers and conductors, make all repairs and spend for replacement of buses. Those replaced buses would be the property of the company. And also with regard to
 20 insurance, if there were third party claims as a result of accidents, if the insurance company did not pay it had to be paid by the managers. In consideration of all this the branch managers were to take the 90 per cent. to meet those contingencies. There was no other way of working it because we had no capital and the members were not willing to sell shares to outsiders. I mean the shareholders at the time were not willing to sell shares to outsiders. They did not want it to be a public company but a private company. The principal shareholders at that time were Jayasena, Muhandiram B. J. Fernando, W. K. Fernando and Francis Alwis and S. A. Samarasinghe. Jayasena had contributed the largest number of
 30 buses. He had a large fleet of buses. Between himself B. J. Fernando and W. K. Fernando they had the majority of the buses on those routes sufficient to enable a company to be formed and those three owners offered to get the route licence and throw out the business of the other bus owners who plied on those routes. Therefore the company decided to work it on the system of branch managers and there were different branches formed like A, B, C, D, E, etc., and some of the bigger men were to be in charge of those branches. We had to do that because supposing a man who owned one bus played false there was no hold on him by the company but those who had a large number of buses we had a hold on and therefore we preferred to make them branch managers
 40 because their stake was larger in the company. Besides they were experienced men. At the meeting of 17th November I explained all these matters to them. I cannot say for how long the company had been operating on the branch manager system prior to the 17th November, it had been done for a number of months and that was well known to every one. I say so because at that very meeting they wanted to come in and they wanted the buses and the 90 per cent. or to get out of the 90 per cent. something for their shares. I am now referring to that meeting which I specially got summoned. It is at that meeting that I

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 Defendant's
 Evidence
 A. P. de
 Zoysa
 Examination
 —continued.

explained these things. I do not know whether prior to that meeting the small bus owners had been trying to come to some arrangement with the larger shareholders to get a proportion of the 90 per cent., but at the meeting I summoned they wanted a certain proportion of the 90 per cent. if they were not allowed to manage their own buses. The company could not agree to that. We had no power to do that. Jayasena was also not agreeable to that. I think Jayasena was present at that meeting. I was there. Muhandiram Fernando was there. I think Fernando left early. Those present at the meeting were not agreeable to the suggestion that the smaller bus owners should share in the 90 per cent. and I made that clear to them that they could not expect anything out of the 90 per cent. I spoke in Sinhalese and I explained to them how companies are worked and even if I wanted to do something I could not unless the majority agreed to it. If the majority had agreed to that suggestion of theirs I would have had to summon a meeting and get the formal sanction of the company to do that because previously the company had decided to work on the branch manager system. I had that in my mind and made that clear to them.

On behalf of the small bus owners I believe Malawana spoke. He said he could not on any account take shares unless he is given a branch or 90 per cent. of the collections of his buses. Others said they would consider and let us know. I do not say they said so individually but generally—I asked them if they wished to express their views and then Malawana spoke and several others said they would let us know later. At that meeting Jayasena objected to share the 90 per cent., he said he would have to do all the work and he could not simply give a share of that to those who gave their buses. This is what I recollect, I cannot remember all the details. I know that he said he was definitely against the sharing of the 90 per cent. or granting new agencies. At that meeting there was no definite agreement reached. All throughout we were anxious to give them shares and the whole trouble was they imposed conditions on which they asked for shares. We were worried over this delay because we had to send returns to the Registrar declaring our shares and so on and the bus owners were insisting on what they wanted. I tried my best to give them shares and explained to them my inability to accede to their absurd proposals. I told them if they can speak to the other bus owners who were shareholders and get them to agree then I would summon a general meeting of the company and put it right. I wanted them to go to the shareholders and convert them to their view and then a meeting summoned and a resolution passed, otherwise it would not be done.

I explained that clearly to them. It was not a practical proposition that they were putting forward, that each of them should run their own buses and take 90 per cent. of the collections. The meeting ended at that and there was no final decision. Thereafter some of them were sent the value of their buses and they refused to accept the money and some cheques were returned. After the cases were filed the company

has brought the money due to all the plaintiffs to court, including the plaintiffs in cases 16290 and 16291. If the money in cases 16290 and 16291 have not been brought in I am willing to deposit that money also in court.

I presided at some of the Directors' meeting of the company and minutes were kept and I have signed them in most instances and the other Directors have also signed them. There is a Minute Book of the company which I produce D1. On various pages of D1 there are noted the minutes of various meetings and my signature appears there. These are a correct record of the meetings held.

Cross-examined.

Luncheon Interval.

(Sgd.) W. SANSONI,

(Sgd.) W. SANSONI,
District Judge.

25th June, 1946.

DR. A. P. DE ZOYSA, affirmed, (recalled).

Cross-examination (Contd.).

Prior to 21st December all the bus owners were asked to join the company and become shareholders. I thought they would agree to become shareholders. When there was a discussion on that day it was on the footing that they would be given shares. No question of their selling the buses to the company was mooted on that day. There was nobody who expressed any reluctance to give over their buses and take shares. On that day the prospectus was shown to them and the memorandum was read out.

About the middle of November some people got together and tried to get themselves registered as the K. B. bus Company. There were others trying to get the route licence. Mr. Mivanapalana was trying to do that. We wanted as many as possible but I know definitely there were about four people who signed the memorandum, they had enough to get the route licence but they were anxious to get as many people as possible. I think the Secretary and the notice calling for the meeting will explain all that. This is a copy of the notice calling for the meeting. That is P2. This is signed by Mr. Donald Perera. Mr. Perera was asked to value the buses in order to decide the number of shares to be given. P2 shows a meeting was held on the 6th January.

The forms P4 were signed on a certain date. That was to ensure their joining the company. Shown the last part of the form. "I undertake to take shares in the company to the value of the omnibuses mentioned below." That was their acceptance of the offer of the company to give them shares. We were not unwilling to give shares. This document was signed as evidence to show the Commissioner that we had the largest number of bus owners to join us. These forms were printed at the instance of the company. The signatures were obtained by the

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 —continued.

company. These forms were obtained by an officer of the company. I do not know what happened because I was not present. In order to obtain the licence we presented all our evidence. Even without these we could have obtained a licence. We did present these. Having presented these among others we obtained the licence. Thereafter these people agreed to take shares in the company and the buses were taken over at a valuation. The valuation was a valuation made by the officers of the company—Mr. Donald Perera. There was no complaint to me about the valuation of buses. I cannot remember a letter where in Mrs. Alice Wijeratne complained that her buses were undervalued. It may be that she has written. The company replied by P35. I do not know that in valuing these vehicles the officers of the company had the total number of shares outstanding. I do not know how they valued it. I do not know whether they were the market value at that time. They agreed to the sums. I do not know anything about market value of buses at that time. I do not know for how much these buses could have been sold in the open market. The meeting at which I made these explanations may have been on 17th November. Between the date of their giving up the buses and the meeting of 17th November there was correspondence between the company and these parties. Some of the letters were definitely asking for shares later and on certain conditions. They wanted permission to run their own buses. There were such letters. I did not bring any of the letters. I am not producing any of the letters. The officers of the company were asked to discover what documents were in their possession. Some of the letters were written personally to me.

Shown P8. That letter was received by our company on the 23rd January. This was exactly their attitude. In the letter he claims to be a shareholder of the company and wants to know from the manager the working system of the company.

Towards the end of the letter also he says he is a shareholder of the company. I do not know if there was a reply to that letter. At that stage we did not treat him as a shareholder. I do not know why the manager did not write. I did not see that letter before. There were several letters like that for permission to run their own buses. No other correspondence passed between L. A. Perera and our company until we asked him to come to a meeting on the 17th November. At the meeting of the 17th November I cannot remember if L. A. Perera was present. I cannot remember him by name. I remember Malawana because I met him later. All those who asked for shares on such conditions were asked to come.

I do not know if long prior to the meeting the directors had decided that L. A. Perera was not to be given shares but should be paid money. Shown minutes of 9th November, 1943 marked P50. The payment to L. A. Perera was approved.

Q. Why did you decide to hand back L. A. Perera money and not allot him shares? This was because these people were refusing to take shares on the conditions.

When was that? Prior but I cannot say. It must be naturally before the directors meeting. Otherwise we would not have denied to give him shares.

When did he refuse? I cannot say when he refused. There is no document to show he refused. Personally I have no document. I have not seen any document. I do not know if the company has any documents. This was on the 9th November.

Q. Why did you go through the farce of inviting him to a meeting on the 17th November? Even after this we were anxious. Till that date when I said I got a meeting specially summoned we were trying to persuade them to take shares. We had to return the money because they did not want the shares on those conditions.

We wanted to see still whether they could be persuaded to take shares on those conditions because they did not keep quiet when they got the money. Some of them came personally. I do not know that L. A. Perera did not get money at any stage. Prior to that date there had been an earlier decision of the directors. Shown minutes of 24-8-43 marked P51. Paragraph but last read. There was a resolution of the directors' meeting at which I presided to allot shares. The delay in allotting shares was due to the fact that when we wanted to allot shares they did not want to accept them. Sometimes when we wrote we did not get replies. The share certificates were delayed. The trouble is if they had been straightforward the matter could have been dealt with. They did not say they did not want shares then we can understand. They say they want shares on the conditions they offered. That has been the great difficulty. They wanted to be shareholders according to the conditions they dictated. When the original signatures were obtained to P4 there were no conditions. They were people who were not prepared to accept the conditions of the working of the company. All thought there was to be a company. When they found some owners were running buses as agents they thought that they must also have the same right to run their own buses. They thought other shareholders were specially favoured. We had to explain that it was the decision of the company at the general meeting and at the directors' meeting.

Q. Is it not the fact that the directors were trying to induce those who criticised the methods of the company not to take shares? If there was anything like that I would have objected. In many cases I went into it personally to find if there was anything unjust.

I never had a bus. I got 40 shares. They wanted me to be the Chairman of the Board of Directors therefore they gave me 40 shares. They are educated. They wanted me to direct them; they wanted my assistance in many matters. I was not to be a figure head. Some of the bus owners distrusted the others. There may have been quite a number who distrusted Jayasena. Jayasena owned the largest number of buses in this company. Muhandiram B. J. Fernando, Jayasena, B. K. Fernando and Francis owned the larger number of buses. I got 40 shares without contributing anything.

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 —continued.

I am a director of the M. J. Insurance Company. That was an insurance company in which Jayasena had the largest number of shares. From the date of its incorporation I was a director. They started the insurance company on my advice. There too, I did not provide any capital. I was given sufficient shares to enable me to be a director. The value of each share was Rs. 1,000. It was not because my name should appear in the prospectus but I advised them about the advisability of forming an insurance company he said he would do it if I would be a director. I considered the matter and consented and in order to make me a director they had to give me shares. Jayasena had 150 shares of 10 Rs. 1,000 each. The total capital was 2 lacs.

Jayasena had a number of buses on this line. After the company was incorporated to the branch in which Jayasena was the branch manager of the Sri Lanka Bus Co. all his buses went in. We called him the agent in respect of branch A. Into that branch went all M.J.'s buses. I do not know how those buses were actually divided but we assumed that the buses he had and perhaps some more added or some taken from that branch were given to others but it was left to the people who had experience and who knew how many buses were required for each branch. Prior to the incorporation of this company M. J. was getting the profits 20 of his buses. Now he runs those buses and some other buses surrendered by others and he takes 90 per cent. of the gross takings. As the agent of the company he is allowed to take 90 per cent. of the gross takings.

When our company writes letters it keeps copies. We have a business office. We have got a manager, secretary, clerks and typewriters. There is no letter we can produce allotting any shares to any of the plaintiffs in these actions. I did not go into it but I remember signing several letters. I do not know these people by name. The first allotment of shares was as early as the 5th January, 1943. Shown minutes of 5th January P52 and minutes of 15th January, 1943 P53. 30 We allotted the shares there. On the 15th January we bought 12 omnibuses from B. J. Fernando. Some of the buses were very old some were new. We allotted shares as early as January, 1943. All the plaintiffs in these cases had given up their buses to the company at a valuation in the latter half of January or early February.

Q. Will you explain to me why they were not allotted shares? These people gave their buses accepted the position fixed and wanted shares, whereas the others wanted shares and in addition to shares the buses in order to run them.

(To Court. We got receipts for their buses. We took a receipt for 40 a bus. We were trying to help them to join us. Sometimes they stopped me on the road.)

We were trying all along till November to give shares. That was till I got them summoned for the meeting. I did not want to dissuade them from taking shares. I cannot remember a letter of complaint sent to the Director of Motor Transport which was sent to my office to be dealt with because there were so many complaints. Shown P25. I did

not see this. This was written by Donald Perera. Some of these things did not go through the directors. There are some things which he is authorised to do without consulting the directors. He wrote this with authority. The reply to that letter is P26. He says he does not withdraw his capital and he says he is returning the cheque. He calls for his shares. That is a communication from Arnolis Appuhamy. Shown the minutes of 29-6-43, P54. Minutes read. I was present at that meeting. I do not know if a letter was sent about the decision of the directors. I did not say they did not want shares they wanted shares but they
 10 wanted the shares on a certain condition.

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Q. Where is the condition attached to his letter P26? I do not know about the condition to P26. P26 is a general letter asking for shares. But then sometimes they bring the cheque themselves.

(To Court: Arnolis Appuhamy in his letter did not ask for conditions. I do not know whether he brought the letter and repeated this. If a person was not given shares it was because they wanted to run their buses or wanted a percentage of the 90 per cent. takings. We did not in any way anticipate going to Courts and litigating. The directors generally discussed this. It is not business like not to write letters or to reply to
 20 letters but to my knowledge it was done. We as directors decided this. It was the duty of the clerk or the secretary should have done it. We took it for granted that that was done.)

In the case of Gunasekera he had signed the same petition and we sent an identical letter to Gunasekera. I do not know anything about this letter. Shown P25. That is Mr. Donald Perera's signature. The reply sent by Gunasekera to the manager is that he did not want to withdraw capital contributed by him to the company and—he says he is entitled to shares. That letter should have been replied to as a matter of business. Shown P27. That is Donald Perera's signature. The next
 30 meeting was the meeting of 29th June, P54. At that meeting Gunasekera's letter was not dealt with. Gunasekera on the 21st August called attention. As a matter of business that letter should have been replied to. He wrote P30. The reply we sent was P31. I cannot explain why in that letter it was not stated that shares were allotted to some people. That letter was written by somebody else. Minutes of 27th July, 1943 P55. I was present at that meeting. It was decided to pay off L. A. Perera, Malawana, Arnolis Appuhamy, Gunasekera and others. The minute is that it was decided to pay compensation to the omnibuses which were sold to the company and in which shares have not
 40 been allotted to the following and there is a list of names. I expected they should be informed. This is the first time I hear they were not written to. This action was filed a long time ago. I did not expect whether I would be asked whether these letters were replied to or not.

The company paid the branches 90 per cent. of the gross income as commission. They undertake to attend to repairs, etc. There is an agreement by each branch agent what he should do to get the 90 per cent. I do not know if this system has been investigated by the C. I. D. The

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E. P. D. misunderstood the whole position by saying that we have got into this system in order to evade Excess profit. It was very unjust I should think. They thought and circumstances agreed so well that this must have been a deliberate attempt to evade excess profits. They were actually made because there was no way out, as according to the attitude taken by the members who said they should not be a public but a private company. Some of them borrowed. The South Western is a public company. They can borrow they can sell shares to the public. Most shareholders were not ready to pay a cent except the buses. They can sell shares. There can only be 50 members and we cannot sell shares. 10 It is in our articles of association. It is the basis on which the company was formed. It is a resolution of the general meeting. This resolution can be rescinded by another general meeting. This is the only system which was acceptable to the majority of the shareholders. It was a unanimous decision not the decision of the majority. The shareholders who were present will be given in the minutes of the meeting of 22nd January, 1943 P56. This was the opinion and this was the general opinion of those who wanted the association formed and my learned friend counsel reads the thing which was meant as a prospectus to be placed before the association. Then subsequently at the regular general 20 meeting this matter was put. This 90 per cent. was taken as a branch system as a temporary measure till the association had sufficient funds. Those persons were not given share certificate at that time. The certificates were not given later I think we had to wait till they were printed and I think they were given some months after. I think it was several months afterwards that the certificates were given. The certificate has my signature and the date. Other persons were allotted shares from time to time in the middle of the year. The allotment of shares and the issue of certificates—those two dates did not coincide. E. P. D. has challenged it as fictitious and has placed its own assessment. That is in 30 appeal now. I think the fact is this the income tax department has not placed its own assessment. It has assessed us. It has assessed us on our basis of income on an alternative footing. The footing was to go into the accounts under the branch system and see what the accounts should be and go independently of the branch system and see what is bigger. The E. P. D. thought we had decided to form ourselves into this system in order to show reduced profits.

Q. Even when allotments of shares were made the shareholders who received shares were not informed for several months? No.

Minutes of 1st October, 1943 marked P57. Allotment of shares were 40 made to Martin Dias. A copy of the share certificate of Martin Dias showing that the certificate was issued on the 17th December is marked P58.

The branch system had been running for several months before the 17th November. Originally it was the same system. The G branch was in Kurunegala. K. M. Perera was the branch manager. I do not know when the branch was first run, month after month he distributed the

income between all bus owners. There was a case against K. M. Perera but nothing came out of it. I do not think it is pending. It was a private plaint. I was summoned. I was told that the accused was discharged. Two days I went there. Both days nothing was heard the case was put off. Subsequently I asked whether I should come they told me that the accused was discharged. One of the accused said he was discharged and nothing came out of it. I do not know if the matter was referred by the Magistrate to the C. I. D. I do not know if Mr. Walter Jayawardene assisted the prosecution. He may have assisted the

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Prior to the 17th November, 1943 I do not know that several of these people who had been invited to the meeting had been clamouring for shares. I wrote to them to come to the meeting of 17th November. They attended that meeting. That was a meeting of a few directors to which these people were invited. It was a meeting to which I invited them and there were two directors present. There were some directors present to explain things. I addressed them. I did not say to them that this was a big Ceylonese concern and was in danger of competition from Europeans. I did not say this was the largest Ceylonese firm. I said that we had to lay up reserves. I also said that therefore we will not be able to pay dividends for several years. I said for years we may not be able to pay dividends. I did not ask them to take the money. I summoned them in order to help them to take shares. There was one Mrs. Wijeratne who wanted a loan and dividends and I had to explain. They asked for 90 per cent. profits that was what induced me to say that for years till we built up reserve funds we will not be able to give dividends. I remember one lady I forget her name had written to me not only asking for a loan and asking for dividends of shares. They asked for dividends to be paid weekly or monthly. That induced me to explain to them that we will have to build up reserves. Learned Counsel now wants to twist it to say that I wanted to discourage them from taking shares. I explained the position that we are going to give shares in case they are willing to work it according to the conditions. Only one person Mr. Malawana objected. The others said they will let us know.

Will you tell me the words you used to encourage them to take shares? I cannot remember.

Will you tell the arguments you used to induce them to take shares? I did not induce them to take shares. I said the company was willing to give shares in case they are willing to work according to the decision of the company.

Why did you say that you were prepared to give shares when the directors had decided that they should not be given shares but should be paid compensation? The directors did not want to give shares because they said they did not want shares unless they were given to run the buses. Still I thought if these people could be persuaded to be reasonable I could persuade the directors to give them shares.

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Mr. Malawana did speak. He did not say that I was a doctor of Philosophy. He appealed to me saying that the company is discriminating, is favouring some and not favouring him and others. I had to explain to him that it was not a matter of favouring; even if I wanted to do anything for them according to the decision of the company I could not act. Mr. Malawana wanted the bus service what they called a branch failing that profits out of the whole bus income collected and he objected to the 90 per cent. being given to the agent. They provided the capital, we gave the shares. About losses he did not speak. He did not speak about shares and shares alone. That is a matter which came up after 10 this case only. I did my best to persuade them to take shares; they felt that others were making profit and they were not that was the root of the trouble.

(To Court: Malawana refused to take shares on the 17th November unless he was given those concessions).

Shown P21. I received this letter. I did not reply to this letter because he made it quite clear to me on the 17th that he will not have shares at all unless it is given on the terms he asked.

(To Court: What he said he said in the presence of a large number of people. There are letters which require a reply and which require an 20 immediate reply. I do not think I will write a letter to this. I must have written him letters before this.)

This letter was not long after the meeting. Malawana has set out the exact opposite of what happened between him and me. If I start writing like that I will have nothing else to do but to write. They say one thing today, the next day they say something else and the third day they contradict. Very often about things like that I tell the Secretary to put it by.

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tion

Re-examined. I have been questioned a great deal about what happened at the meeting of the 17th November. I do not know the 30 plaintiffs by name. I have seen some of the plaintiffs in the verandah of the District Court. I have seen them on the previous dates of trial in the court premises. I am able to state that some of those were present at that meeting. I can identify them by sight though I am not able to do so by name. Mr. Malawana spoke.

(To Court: I know him alright. Mrs. Alice Wijeratne I have seen her. I cannot remember if she was present at the meeting. She may have been there. I now know L. A. Perera. I cannot remember if he was present at that meeting. I do not know the plaintiff by the name of Bandara. Shown B. H. A. Bandara. I have seen him but I cannot 40 remember whether he was present at that meeting. Shown W. D. R. Gunasekera. I cannot remember him at all. I cannot say if Mrs. Alice Wijeratne was present at the meeting. Shown Arnolis Appuhamy. I know him. I believe he was present at the meeting. Shown Kirinelis Perera. I do not know him at all. Shown R. D. Siyaneris. I cannot remember. There were about 10 or 12 people present roughly.)

Amongst them were the people who had no shares allotted to them. Among them were some who wanted shares according to their own conditions. Malawana was the only person present who spoke. The others said they will let me know later. Malawana refused. Malawana did not say that even if 90 per cent. was paid to the agents he was willing to take shares. Malawana's evidence put to witness. That is not true. He made an appeal to me but he did not say anything like that. He appealed to me but not in that way. He insisted that he should have a branch or 90 per cent.

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10 Q. Did he say that he would take shares even there were 90 per cent. profit 10 per cent. or no profit at all or even if there were losses? He did not say that.

I did not make notes of that meeting.

(Mr. Wickremenayake marks minutes of meeting of 17th November P59.)

Shown P59. I have signed the minutes among others. Very often I translate the minutes. At the directors' meeting I read them out and translate them to Sinhalese. I think I read them out before I signed. I think P59 I read before I signed. That correctly sets out the position
20 of what took place. The people who said they would inform later did not inform me later that they were willing to take shares on the conditions on which the company was willing to issue shares. The decision to establish branches was taken as far back as 5th January, 1943. According to the minutes P52. The company had to borrow money from some shareholders because it had no capital of its own except the buses. On the 22nd January, 1943 the agents of the various branches were appointed. The meeting approved that 90 per cent. of the collections should be paid to the agents for expenses and the running of buses. They were the only shareholders at that time. Even those peoples old buses were valued
30 at less but the new buses were valued at more. There was no discrimination in valuing buses. I was shown minutes where it was decided to pay off cash instead of issuing shares. We did not delay specially for any reason in issuing shares. Decisions were taken as far back as July, 1943. I was present at that meeting. We paid them later on. We had to pay because they took an attitude that they would not accept the money nor the shares. It went on like this and we were trying to make settlements and finally a meeting was called. In spite of the directors' meeting we tried to effect a settlement and when even that failed I got them up for the meeting of 17th November. Then the final decision was taken
40 after that. Till then I was hoping that some sort of settlement would be effected. The directors never decided to allot shares to these people who have brought these actions. I had no authority to allot them shares on any other condition except the condition on which the company was working the buses.

(To Court: I was not authorised to give shares. Personally I do not mind giving them shares. I wanted to find out whether they were

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even then ready to receive shares minus the conditions. I was acting on their own behalf. It was not actually a directors' meeting. There were 2 or 3 directors present. I was not acting for the company on that day. I was trying to bring about a settlement).

If any settlement was effected I would have given effect to it by trying to persuade the directors. There would have been a formal meeting of the directors to give effect to the settlement or even a general meeting. No settlement was reached.

(To Court: I do not know who gave instructions for the filing of these answers. I did not give instructions. I do not know what the 10 answers were that were filed. "At the meeting of the directors of the defendant company held on 17th November the plaintiffs refused to become shareholders.")

It was not a directors' meeting. Paragraph 5 of the answer is not correct. It is not correct to say that at that meeting of the directors the plaintiffs refused to become shareholders of the company. Malawana is the only person who refused to become a shareholder. It was not a directors' meeting. They refused on the terms offered by the company.

Do you know that nowhere in the answer is there the allegation made that they asked for special conditions? I do not know. 20

If you were giving instructions would you have told your proctor to state that they were not refused shares that they were given shares but they wanted special conditions? I would have said that.

I do not know who gave instructions.)

(Sgd.) W. SANSONI,
District Judge.

M. Jayasena
Examination

M. JAYASENA, affirmed. 46.

I am a director of this company. I am also a director of the Colombo-Ratnapura Bus Company. I am also the managing director of the M. J. Insurance Company. The M. J. insurance company is practically 3) my own concern. I own the majority of the shares in that company. Before this company was formed I owned a very large fleet of buses. I ran buses along many routes. I was running buses practically all over the Island. In view of the New Ordinance which was to come into effect on 1st January, 1943, it was decided to form a company. I got into touch with others who ran buses on these particular routes. Muhandiram B. J. Fernando had a large number of buses on these two routes. There was another bus service called the Little Service Bus Co. That belonged to Alwis and Fernando. There was also the Tarzan Bus Co. Between myself, B. J. Fernando and the Little Service Bus Co., we would have had 40 the majority of the licences in our favour. The company was formed nevertheless with others also. It was incorporated in November, 1942. According to the Ordinance licences would be issued to ply buses from 1st January, 1943. Once the company got the route licence those who

owned one or two buses who did not join the company would not be allowed to run buses on that route but they would be able to get compensation from the company. We decided to take in as members of the company those who were willing to join. That was those who were willing to become shareholders. A meeting was called on 21-12-42 of the various bus owners who owned buses which were running on those particular routes and branches. I was present myself at that meeting. Dr. Zoysa occupied the Chair at that meeting.

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At that meeting of 21st December he told the bus owners that we had formed a company to run buses and if they were willing to give in their buses to the company and if they wanted shares the company was willing to give shares. If they wanted cash the company was willing to give cash. We instructed Donald Perera to assess the buses. We also agreed to pay something for the route licence. We agreed to pay Rs. 500 for the route licence.

I contributed 40 odd buses of mine for this company. Practically all the buses were new. Muhandiram B. J. Fernando contributed how many buses I cannot remember. I cannot remember if Muhandiram B. J. Fernando was present at the meeting of 21st December.

20 Q. Those who had not joined the company and those who had not given the buses were they willing to give the buses to the company and join the company? They could not stay without joining.

They wanted the buses valued first and thereafter they consented to give the buses and join the company. There was a further meeting of bus owners on the 6th January. At that meeting I cannot remember what happened. I have been a director from the very start. I have attended meetings of the board of directors.

Case postponed for 1st July.

(Sgd.) W. SANSONI,
District Judge.

30

1-7-46.
Counsel as before.

M. JAYASENA, affirmed.

I have been connected with this company from its inception and even prior to that I was running buses on my own. Nearly 90 per cent. of the earnings go for expenses. That has been my experience during the many years I have run buses.

Before the company was formed I discussed the question with B. J. Fernando and others and we decided to work the company on the branch manager system paying a commission to the branch managers. I produce copy of the memorandum of the Company D2. I draw the attention of the court to clause 3(D). We decided to pay 90 per cent. to the branch managers because I knew they could not otherwise run

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—continued.

the buses. They had to repair the buses and spend on replacing new buses—in fact stand all the expenses. From the date the company started the buses were run on that basis. That was explained to the various plaintiffs in these cases. It was explained to them at the second meeting. Shares were not given to these plaintiffs because they said they wanted a share of the 90 per cent. They wanted a proportion of the profits of the branch managers. They wanted a share of the profits according to the proportion of the buses they had given. I did not agree to that nor did the other directors agree to it. Plaintiffs were informed several times that could not be done. On the last occasion it was told 10 them was at a meeting at which Dr. A. P. de Zoysa presided. I was also present at that meeting. I made my view quite clear and the view of the other directors that the bus owners could not expect anything out of the 90 per cent. There were a number of bus owners present at the meeting. They were not agreeable to accept shares on the basis which I put forward.

Towards the end of 1942 and 1943 these buses could not be sold at a big price. The military took about 40 of my buses and paid me compensation for that. I was paid at a depreciated value of 25 per cent. for each year on the price I paid for the buses. 20

The registration of a number of buses handed over by the plaintiff have been cancelled as the buses were unroadworthy. I produce D3 a list of the buses taken over showing which were cancelled as unroadworthy. I produce official letter from the Registrar cancelling the registration D3.

As regards the dividends declared by the company for the first year 1943/44 it was one per cent. that would be about Rs. 6,000. The issued capital was 6 per cent. at that time. For the next year 1944/45 it was about five per cent.

At the meeting in November, 1943 it is not true that all the plaintiffs 30 were prepared to accept shares, whether they got a proportion of the 90 per cent. or not. They said if nothing was given out of the 90 per cent. they did not want shares.

M. Jayasena
Cross-exami-
nation

Cross-examined.

The company was incorporated on 24-11-42. I am not certain of the date the exclusive licence was issued to the company, it may be about the middle of January, 1943. I have a record of that in the office. I attended court on the last date. I did not know that Dr. de Zoysa was asked to supply the date when the licence was issued. Before that the directors had to make ready to run the buses and after the licence was 40 issued we met and discussed about the method in which we were going to run the buses. P1 was sent out by the Secretary of the company and he was directed to send that notice by the directors after discussion. The bus owners came for the meeting of 21-12. When they came they knew they were going to join as shareholders in the company and we

summoned them to take them in as shareholders. At that meeting they did not agree to be shareholders. They were told if they were willing to give their buses they would get shares or the value of the buses. If Dr. de Zoysa has stated that there was no talk of giving the value of the buses at that meeting that would not be correct. At that meeting the prospectus was shown to them and they were told there were 4,100 shares outstanding to be allotted to those who were willing to take shares on account of their buses. After that meeting the directors met and discussed things again and gave instructions to the Secretary to send out the notice P2. The notice says "it has been decided" that is the decision of the Board of Directors. The bus owners were also asked in that notice to bring their certificate of registration. Plaintiffs in these cases came to that meeting and I presided. That is the 2nd meeting and at that meeting the bus owners were explained that the company was going to be run on the branch manager system. Thereafter they were given forms like P4 to be signed, that is by all who consented to join the company and all the plaintiffs signed. The distribution of the form was done on the authority of the directors. At that meeting Malawana did not say he was willing to buy shares to the extent of Rs. 50,000. I did not hear him say that. Malawana and I prior to this have been running buses on those routes as rival bus owners. I may have made an application to restrain him from running buses on those routes as it would result in a breach of the peace. I made that application not only to restrain him but others as well. That may have been in 1938. I may have applied to the Minister also to have him restrained. I took every possible step to stop his running those buses.

In January/February, 1943 the bus owners gave up their buses on a valuation. Donald Perera made the valuation. Thereafter there was correspondence between the various plaintiffs and the company, but I do not know about those things. Even after this case I did not try to find out what the correspondence was about. Some of the correspondence may have been placed before the company. I do not know whether Alice Wijeratne asked for her profits or whether she asked for a loan against the dividends. I cannot remember any such matter being discussed by the Board of Directors. (Shown minutes of 30-3-43 P60) I have signed these minutes. There is a reference here to that matter. (Shown minutes of 24-8-43 P51). This resolution was passed. The company had no intention at any time not to give shares to the bus owners. At the meeting of 6-1 the company said they were willing to give shares and the bus owners accepted it and signed the forms. I gave instructions to the proctor to file answers in the various cases. The Secretary was present when instructions were given. (Plaint put to witness—para. 3) I admit the correctness of this. The next para is also correct. (Shown para. 3 of answer). My proctor has denied the correctness of those two paras. I do not know why that has been done.

I handed to the company 41 buses. They were all in my branch. Now there is one more bus on that branch than the 41. At that time

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there were six more. I got 90 per cent. of the gross-takings of my buses and of those six buses. I am a wealthy man worth about 10 or 12 lacs. About 20 years ago I was a poor man. I started business in a very small way and I had one bus. I was not in debt in 1939. I did not make all this money on the bus business. I started with one bus and then bought other buses and also properties. I also invested money in an Insurance Co. All this money did not come out of the bus business I did. I am a director of three companies. Dr. de Zoysa is also a director of three companies. In respect of this company Dr. de Zoysa was given shares worth Rs. 4,000 without his investing any money. He has shares in all 10 the companies without contributing capital.

As branch manager I did not show any accounts to the Co. I simply took 90 per cent. of the takings. One reason for that is because the managers were responsible for the repairs and replacements.

(Shown balance sheet for the year ending 1944). After paying the branch managers 1½ million rupees there was still something left over and 124,000 was struck off as depreciation. That Rs. 124,000 is the profit to the company.

The E. P. D. refused to accept the figure of Rs. 20,000 as being the net profits. There is an appeal at present on that. I offered to pay the tax on the basis of the Rs. 20,000 the department rejected that and placed their own assessment and they wanted us to pay one lac as E. P. D. They wanted more than a lac on the basis that the profits of the branch managers also should be taken as the profits of the company. I have my files in court. I cannot say the exact amount taken as E. P. D. There are no shareholders to whom shares have been allotted who have brought actions for accrued dividends on the basis that the dividends paid are incorrect.

The branch managers have never distributed the profits of that particular branch. There was no such system. I know K. M. Perera he is the manager of the G branch. An action was filed against him for criminal breach of trust. That was on the basis that he paid a share of the profits to the bus owners for a certain time and then himself appropriated it. The company was not concerned with that case. I did not go for that case. That was a case concerning the branch managers. My son did not go for that case. The company was not interested in that case. Dr. de Zoysa went for that case because he was a witness. I do not know up to date that receipts were produced for payments made at the earlier stages to bus owners. K. M. Perera is a director of the company and I know his signature. (Shown P51). This looks like his signature. (Shown P62). This is also like his signature, as G Branch Manager. There is also the seal of the Sri Lanka Co. He may have put the seal. The seal on the top is the seal of the branch. I say that from the beginning the bus owners were not given a share of those profits. I did not ask K. M. Perera to pay or not to pay these

profits to the bus owners. When the E. P. D. appeal was going on I consulted counsel. The E. P. D. did not accept the amount they did not say those items were fictitious.

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I cannot say on what date I got my share certificates. They were given two or three months later. It was in January, 1943. By the middle of the year I had my certificates allotted to me. P31 is a letter from the Company to Gunasekere after some matters had been discussed by the directors. It is dated September, 1943. It says no certificates have yet been issued. This has been written by the manager. There is
10 a record of the grant of certificates. The Manager has access to those books but he has nothing to do with the actual issuing of the certificates. The Board of Directors does that.

That was a meeting on the 17th November, 1943. This meeting was held because a number of the owners were clamouring for shares. They were invited there by the directors. That was not a meeting of the directors but a meeting with the directors. I was present and Dr. A. P. de Zoysa spoke. He did not say that the company had to compete with foreigners and that the money should be kept in reserve and so on. He said for the safety of the company money should be reserved. I cannot
20 remember his saying that no dividends could be paid during the war because after the war the earnings would be less. He did not say that dividends could not be given for some time. He did not say it is better for the bus owners to be given their money instead of shares. Malawana spoke at the meeting. He did not say they all joined the company because they had faith in Dr. de Zoysa. He did not say that they wanted shares in any event. He did not say whatever profits there were whether 10 or 90 per cent. they wanted their shares and that they were willing to bear any losses. He said they wanted shares out of the 90 per cent. I said that could not be done. Then the meeting ended.

I gave instructions to my proctor to file the answer in L. A. Perera's case that at the meeting of the directors plaintiff in that case refused to be a shareholder after the business of the company had been explained to him. That is to say he did not agree to take a share unless he was given a share of the 90 per cent. Malawana said he refused to take his shares and the others said they would consider and let us know. Malawana refused and the others said they would consider and let us know, they did not refuse. On the next day we sent cheques to the various owners. We did that because of this trouble which existed from the very beginning. There are no letters to show that there was such trouble existing. There
40 are no minutes to show that there was such trouble nor is there any record to show that we discussed such a trouble. It is because of the trouble that the meeting was held on the 17th to arrive at a final decision. There was no final decision at that meeting and when they went away saying they would let us know we had no other alternative but to send them cheques for their money. We got them down to come to a final settlement of this matter and we told them at the meeting that there should be a decision. The minutes of that meeting contain what they

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said. (Shown minutes). I have signed these minutes. It is recorded here that others agreed to notify their consent in writing. That is we agreed that they should send their consents in writing. Before we got the consents we sent the cheques. Some cheques came back saying they did not want cheques but shares. All throughout they were asking for shares. In none of those letters have they said they wanted a share of the 90 per cent. they simply said they wanted shares in the company. I did not then take their cheques and allot shares because they left the meeting saying they were not prepared to accept the conditions of the company. Your own minute shows they said they would send their consent, then why did you send them cheques? No answer.

I do not know whether any of them wrote direct to Dr. de Zoysa. I do not know whether those letters were placed before the directors. After the company was formed there were a number of meetings of the directors. The minute book existed from the start. Of the meeting of 21st December there is no record. That is because at times the directors got together and discussed matters informally. The bus owners were invited for that meeting of the 21st. The directors summoned that meeting and asked the bus owners to be present. The directors acted as directors there and explained matters to the bus owners. The meeting of 6th January was a similar meeting. I do not know whether all the directors were present at that meeting. There was at that time six directors. I do not know how many of them formed a quorum, I think four. The Secretary was present at those two meetings.

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Re-exami-
nation

Re-examined.

At the meeting of 17-11 Malawana or any of the other plaintiffs did not say they were agreeable to take shares. If they were not to be given anything out of the 90 per cent. they said they did not want shares. Practically all who were present said that. It was Malawana who spoke and he said he wanted out of the 90 per cent. if not he was not prepared to accept. Others also insisted on that and when we said we were not agreeable they said they would communicate later. They did not say they would give their consent later. The company was not concerned with the way in which the branch managers dealt with the 90 per cent. I was a branch manager. I did not divide my 90 per cent. with any of the bus owners. There were six other buses in my branch then.

(Shown P11). The depreciation of 124,000 refers to the wear and tear of the buses. The buses are the property of the company and therefore the company is entitled to that sum of money. The company also claimed that in the Income tax office and E. P. D. I was not in debt or financially embarrassed in 1939. Apart from buses I have an income from my estates and properties.

The Magistrate's Court proceedings were to restrain several bus owners and not Malawana alone. (Shown minute book). If there was a meeting of the directors and any decision arrived at that was always

recorded in the minutes and signed by the directors present. That system was followed from the day the company was formed. Minutes of all directors' meetings are kept. Also of the general meetings of the company and also of special meetings. It also has a note of the meeting of November, 1943.

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(Sgd.) W. SANSONI,
District Judge.

Mr. Choksy closes his case reading D1 to D3.

Mr. Wickremenayake further reads in evidence documents up to P62.

10

(Sgd.) W. SANSONI,
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15925/M.

19-8-46.

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JUDGMENT.

The Defendant Company obtained an exclusive road service under the Omnibus Service Licensing Ordinance No. 47 of 1942. The Company was incorporated in November, 1942. Under the new Scheme individual owners of buses would not be allowed to run their buses. The exclusive road licence on any particular route would be given to the individual or company who was able to obtain the largest number of the existing route licences. For this purpose companies were formed and owners of buses running on particular routes and had route licences were invited to join the company and surrender their route licences and buses in exchange for shares in the company.

The defendant company, it is clearly established and hardly denied, invited the owners of buses to become shareholders in the company.

The plaintiff in this case is one such bus owner who surrendered his route licence and bus to the defendant company accepting their offer, but was not given or allotted any shares. The plaintiff's bus was valued with the route licence at 5,000. He asks in this action for shares to that value and also for damages from 18th January, 1943, the date on which he transferred his bus.

A number of bus owners appear to have been treated by the defendant company in a similar manner. They have all filed actions against the defendant company on the same grounds but claiming various amounts as damages. Cases No. 15925 to No. 15931 and No. 16290 and 16291 (9 cases in all) were by consent of counsel who appeared for the plaintiff and defendant respectively in all the cases, tried at one time. The issues framed in this case were to be the issues in all the other cases. The

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evidence led in one case was to be considered as evidence in all the cases—
but the parties, *i.e.* the defendant company would not agree to be bound
by the final decision in this case.

There will therefore have to be separate judgments written in each
case but the reasons for the findings will be found only in this case—to
avoid vain repetition.

There are two main questions for decision. The defences put forward
in the answer are (1) a denial that the directors invited the plaintiff and
other owners of buses to take shares in the company in consideration of a
transfer of their buses and route licences (2) a denial that the plaintiff¹⁰
(and other bus owners) accepted the said offer and transferred the buses
which were valued and taken over by the defendant company (3) a denial
that the defendant company failed and neglected to allot to the several
plaintiffs shares in the defendant company (4) that the plaintiff in every
case refused to become a shareholder of the defendant company, (5) that
even if there had been any offer and acceptance as pleaded in paras 3 and 4
of the plaint there was no valid offer or agreement binding in law on the
defendant company.

At the trial, however, the Chairman of the Board of Directors of the
defendant company who was called as the first witness for the defendant²⁰
company stated that the allegations in para 5 of the answer were not
correct and the other witness also a director admitted the allegations in
paras 3 and 4 of the plaint.

Two directors of the company therefore admit two important facts.
Jayasena has admitted that the directors of the defendant company
invited the plaintiffs *inter alia* to two meetings held on the 21st December,
1942 and 6th January, 1943 and through its directors offered to the
plaintiffs and other owners of buses shares in the said company. Even
Dr. de Zoysa, the Chairman of the Board of Directors has stated
“Generally they agreed that the company should be formed and they³⁰
would join the company..... we took it for granted that they were all
agreeable to become shareholders.” This was in examination in chief.

In Cross-examination, Dr. de Zoysa made the position clearer. On
the 21st December there was a “discussion on the footing that they
would be given shares..... On that day the prospectus was shown to
them.” He further stated Mr. Perera was asked to value the buses in
order to decide the number of shares to be given. By P2 a meeting was
called for the 6th January. On that date forms similar to P4 were signed
to ensure that the bus owners—the plaintiffs included—joined the
company. The last paragraph of P4 was according to Dr. de Zoysa the⁴⁰
acceptance of the offer of the company to give them shares. He also
added “we were not unwilling to give shares. Every one of the plaintiffs
in this series of cases signed the form P4. Dr. de Zoysa stated “thereafter
these people agreed to take shares in the company and the buses were
taken over at a valuation.” That is a complete admission of the cases of
all these plaintiffs up to that point.

It is therefore quite clear even on the evidence led for the defendant company that there was a complete contract. The defendant company incorporated in 1942 through their directors at a meeting duly summoned by the proper officer made the offer of shares in the company in consideration of the transfer of the buses and route licences on 21st December. This offer was accepted by the plaintiffs on the 6th January when they signed P4.

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It is distressing to see how the Directors of the defendant company try to wriggle out of the situation they had deliberately placed themselves in.—It is not difficult to see the motive which prompts at least some of them to go back on their agreement.

Jayasena stated he had given instructions for the drafting of the answer. He admits the averments made in paras 3 and 4 of the plaint and cannot understand or explain why in para 3 of the answer these averments are denied.

On the documents these directors dare not deny that there was the agreement—offer and acceptance—pleaded in paras 3 and 4 of the plaint.

When this evidence was adduced at the trial they had to abandon the dishonest position taken up in the answer and had to have recourse to other defences.

In para 5 of their answer the defendant company alleged that at a meeting held on 17th November, 1943 the plaintiffs refused to become shareholders of the defendant company.

In para 4 of their answer the defendant company alleged that the plaintiffs transferred their buses and route licence in consideration of a sum of money Rs. 5,000 in this case. According to the evidence of the Directors themselves this is not true. Dr. de Zoysa stated “No question of their selling the buses to the company was mooted.” The buses were valued “in order to decide the number of shares to be given.”

In para 5 the averment that the plaintiffs refused to become shareholders is also not true. The same answer has been filed in all the cases. Both Dr. de Zoysa and Mr. Jayasena stated in evidence that only one person, Malawana, the plaintiff in 15930, refused to become a shareholder—although Malawana himself denies it.

The conduct of the defendant company cannot be reconciled with either of the positions taken up at the trial by either Dr. de Zoysa or Mr. Jayasena.

If there was a complete agreement on 6-1-43 what then was the necessity for any further negotiations or talks? There has been no rescission of the contract proved at any time; nor was there any new contract substituted for the original agreement.

Dr. de Zoysa in addition to other qualifications is also a Barrister and an Advocate. He is also apparently a “business magnate,” being

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a Director of three Companies with the good fortune to be so without contributing even one cent for the shares given to him to qualify for being a Director in those companies!

Dr. de Zoysa's excuse—and it is nothing more than that—for not giving the plaintiff's shares is in his own words: "Between the date of their giving up the buses (which was in January and February, 1943) and the meeting of 17th November there was correspondence between the company and these parties. Some of the letters were definitely asking for shares later and on certain conditions. They wanted permission to run their own buses. There were such letters." Not one scrap of paper has been produced to shew the "correspondence between the company and these parties." When pointedly asked he replied "I did not bring any of the letters. I am not producing any of the letters." As these replies might convey the meaning that he was not prepared with these documents as he was taken by surprise, he was asked and admitted that the officers of the company were asked to "discover" what documents were in their possession.

Dr. de Zoysa stated that some letters were written to him personally—even these are not produced—

Till the 17th November, 1943 these plaintiffs had not been allotted 20 shares—They got no share certificates. On the 18th January, 1943 this plaintiff L. A. Perera accepted the figure of Rs. 5,000 offered him (P6). P7 is the receipt by the Company for the bus—On the 23rd January by P8 L. A. Perera calling himself a shareholder wanted to know particulars about the working of the company. There was no reply sent to P8. and Dr. de Zoysa stated "At that stage we did not treat him as a shareholder." But why? Obviously because some of the Directors did not favour his membership after he had actually become a shareholder. L. A. Perera got no reply saying he was not a shareholder.

Dr. de Zoysa stated that as the plaintiffs only desired to have shares 30 on certain conditions they were not given shares and these plaintiffs were finally summoned to a meeting of the Directors on 17th November, 1943. It is hard to believe this because the minutes of the meetings of the Directors prove that before the 17th November a decision was arrived at. On the 9th November at a meeting shares were allotted to several persons, and L. A. Perera and others were to be "paid off." Instead of getting shares for their buses the meeting decided that payments should be made to these plaintiffs and some others (P50). Dr. de Zoysa's statement that this was done because they refused to take shares gets no support from any document. If this were a fact it might even have been so stated in 40 the minutes. Although L. A. Perera wrote P8 on 23rd January, he got no reply and Dr. de Zoysa said that no other correspondence passed between L. A. Perera and the defendant company until he was asked to attend a meeting on the 17th November. How then can Dr. de Zoysa say that he refused to take shares except on certain conditions? Again, why if L. A. Perera had been selected as one of those to be paid off should

be and the other plaintiffs have been invited to attend the meeting of the 17th November Dr. de Zoysa admitted he was not aware of the fact that the minutes of 9th November showed that the directors had decided that L. A. Perera and the other plaintiffs—as well as some others—were not to be given shares but he should paid money—Yet the witness stated that the reason for this decision was their refusal to take shares. He could not say when they refused. There was no document of any sort to show that they refused and the witness had seen no such document. Yet in spite of the decision of the directors the plaintiffs were invited to a meeting 10 on the 17th November. Plaintiffs' counsel characterized this as a farce. It seems to me fairly clear that the reason for this meeting was if possible to get the plaintiffs to agree to take money and not shares. The directors must have felt that they were not on a "good wicket." They had already decided not to allot shares to them. They had no evidence of any sort to prove that the plaintiffs had refused to take shares. On the contrary P8 showed that L. A. Perera considered himself a shareholder and as such had asked some awkward questions which the company found difficulty in answering and the company began to feel distinctly uncomfortable. Shares had been allotted as early as January, 1943. In May, 1943 20 representations had been made against the company to the Director of Motor Transport and to the Minister (P24). As it seemed best to get rid of those who were giving trouble and making things uncomfortable for the company the directors sent a cheque to one of the signatories to P24. The letter P25 sent by the company does not even suggest that the reason for not giving him shares was that he objected to take them except under certain conditions.

On the contrary the company pretends that the reason for paying him off is that he was not prepared to take shares as dividends would not be paid for some years. The cheque was promptly returned along with 30 P26 stating that he had no desire to withdraw the capital contributed by him and he also complained that he had not yet received his share certificate. He asked for it to be sent and stated he was not prepared to surrender his shares.

Here then is definite evidence that whatever complaints they had regarding the way the company did business or ran their buses, they did not want cash or surrender their shares. It is therefore impossible to accept Dr. de Zoysa's evidence unsupported as it is by letters from the plaintiffs or even copies of letters from the company and flatly contradicted by documents *e.g.* P8 P26—and the company's silence in sending no 40 replies after P27 to P28 and P30.

The Minute Book of the defendant company shows that the defences now put forward are after thoughts and not true. The minutes of 24th August, 1943 show that it was resolved to allot shares to those who have surrendered their vehicles (P51). Why was not this resolution then carried out? There is no mention anywhere that some persons had refused to take shares.

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In the minutes of 29-6-43 (P54) there appears a resolution that Arnolis Appuhamy—the plaintiff in 15929—be refused shares and that he be written to that the assessed value is being paid to him. He was one of those who signed the letter to the Commissioner of Motor Transport. He first got a cheque on 27-5-43 with the letter P42. He returned the cheque together with P43 and asked that he be sent his share certificate and stated he was not prepared to surrender his shares. He only complained of the “unsatisfactory and indefinite manner in which the company was conducted.” By P44 he was informed that the matter will be put before the directors at their next meeting. P54 shows that Arnolis Appuhamy was refused shares. This clearly shows that it was not Arnolis Appuhamy who refused to accept shares but the Directors refused to grant him his shares. This was so early as June, 1943—How then can Dr. de Zoysa and Mr. Jayasena expect to be believed when they say that it was the plaintiffs who refused to accept shares—and that was on the 17th November.

Very soon after the meeting at which Arnolis Appuhamy was refused shares, a meeting decided to pay compensation for the buses which were sold to the company and for which shares have not been allotted to the following: namely the plaintiffs in these cases and others—P55. In the face of this how can the defendant company expect anyone to believe their defence that it was the plaintiffs who refused to take shares, when so far back as July, 1943 the company had decided on not giving them shares and paying them off.

The sequence of the more important events in which the plaintiffs—busowners—and the defendant company figured will show how badly the plaintiffs have been treated and how shabbily the defendant company have acted.

1. On 21st December, after the incorporation of the company the bus owners were invited to join the company, give over their buses and take shares.

2. On 6th January, 1943 the plaintiffs (and others) accepted the offer signed P4, and agreed to take shares.

3. The buses were then taken over by the defendant company at a valuation.

4. On 23rd January L. A. Perera (plaintiff in 15925) desired to know particulars about the working of the company and wrote the letter P8 as a shareholder. He was sent no reply. He was for some curious reason “not treated as a shareholder” although shares had been allotted to others.

5. In May, 1943 representations had been made to the Director of Transport and the Minister (P24) by the plaintiffs in 15927 and 15929 (W. D. R. Goonesekere and W. Arnolis Appuhamy) and another—Goonesekere was sent a cheque P25. He promptly returned it with a letter P26 stating he was not prepared to surrender his shares.

6. Arnolis Appuhamy was sent a similar letter (P42) with a cheque. He likewise returned the cheque with P43 and asked that he be sent his share certificate. He was informed by P44 that the matter will be placed before the Directors. This was in May, 1943.

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7. On 29th June, 1943 at a meeting of the Directors it was decided that Arnolis Appuhamy—plaintiff in 15929—be refused shares and that he be so informed (P54). He was not informed—

Goonesekera kept calling attention to his letter—P27, P30, but his letters were not brought up at the meeting on 29th June.

10 8. Minutes of a meeting of the 27th July, 1943 (P55) show that it was decided to pay off L. A. Perera, Pabilis Appuhamy, Kirinelis Perera, W. D. R. Goonesekere, G. D. Malawana, N. N. Matheshamy, R. A. Sirisena, W. A. Arnolis Appuhamy, H. M. J. Bandara and M. G. G. Nanayakara—Most of these persons are plaintiffs in these cases.—No reason is given for not allotting them shares.

Not one of these persons was written to of this resolution, nor were they then paid off.

20 9. Some extraordinary situation of which nothing is known must have arisen at this stage—At the meeting on 24th August, 1943 it was resolved to allot shares to those who have surrendered their vehicles to the company (P51). All the plaintiffs had surrendered their vehicles—The resolution does not make any exceptions—Yet the plaintiffs were not allotted shares.

10. On 1st October, 1943 the minutes show that several persons were allotted shares—but not the plaintiffs.

11. Then on 9th November, 1943 payments to the plaintiffs were approved. It is interesting to note here that N. N. Matheshamy who it was resolved on 27-7-43 (P55) should be paid off was to be allotted shares by resolution on 1-10-43 and was allotted 36 shares on 9-11-43.

30 12. Although this resolution was passed to pay off the plaintiffs—actual amounts being written and approved—yet no cheques were sent and no action taken in pursuance of the resolution.

40 13. On the 17th November the plaintiffs and other bus owners were invited to attend a meeting of the directors. The reason for this meeting was according to Dr. de Zoysa for the purpose of inducing the plaintiffs to take shares. It is impossible to understand or believe this. They had taken shares; they had been refused shares; they were to be paid off—all by solemn resolutions—The only reason for their being summoned was to be informed of the resolutions of the directors and perhaps an appeal was made to them not to make trouble but to take their money and go away. It is also very likely as the plaintiffs stated in evidence, that they were told it was better to take their money as there was no likelihood of immediate profits or dividends even in the near future.

All the plaintiffs stated that they did not refuse to take shares on this day—The only person who has been contradicted is Malawana

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(plaintiff in 15930). The scrappy note made in the minutes (P59) reads :
“The Directors explained the working of the company. Mr. G. D. E. Malawana refused to join the Company as a shareholder, the others agreed to notify their consent in writing later on.” It is unfortunate that the writer of these minutes was not called to state what actually happened and how he happened to record what he did.

Mr. Malawana denies that he refused to become a shareholder.—He was the spokesman for the persons who attended that meeting. They had met at Mr. Mivanapalana’s office before they went to the meeting and had decided that whatever happened they would take shares. Is it 10 likely then that the spokesman or ringleader would surrender his shares and refuse to become a shareholder ?

It is true that the evidence of Dr. de Zoysa and Mr. Jayasena is supported by the minutes.—Or it may be that they are supporting the record appearing in the minutes—in regard to Malawana.

L. A. Perera, Goonesekere, Arnolis Appuhamy, Bandara and Martin Appuhamy were all agreed that no one refused to take shares—not even Mr. Malawana.—In order to decide which version is true it would be useful to see what followed and how the company acted. If the minutes are a faithful and true record of what took place then one would expect 20 that action would be taken in accordance with the minutes.—Malawana had refused to take shares ; the others said they would notify their consent in writing later on. This would imply that they had verbally consented to take shares and would notify their consent in writing later. Why then did not the company obtain Malawana’s refusal also in writing ? If that was done—especially as they had nothing in writing before—there would have been no difficulty in proving the refusal.

Why did they want the consents only in writing, and not the refusal ! Whatever the reason, the subsequent conduct of the company gives the lie to the minutes and makes me distrust the minute altogether even in 30 regard to Malawana.—The minutes might have been “doctored”—but badly.—

Anyhow Dr. de Zoysa stated in evidence that only Malawana refused and the others said they would let him know later.—He stated Malawana was the only person who spoke. Dr. de Zoysa found himself in a difficulty when he tried to maintain that at the meeting on 17th November he was trying to induce the plaintiffs to take shares. He first said “I did not induce them to take shares. I said the company was willing to give shares.” He was then asked what right he had to say that when the directors had already passed resolutions that they should not be given 40 shares. He said he thought he could persuade the directors to give them shares.

Now the case which the defendant company presented in their answer was as set out in paragraph 5 of the answer, namely that “at a meeting of the Directors of the defendant company held on 17th November, 1943, the plaintiff (in each case)..... refused to become a shareholder of the defendant company.”

Dr. de Zoysa goes back on these averments. He stated firstly, that it was not a meeting of the directors "actually." Whatever does he mean? He was the Chairman presumably—but he stated "I was not acting for the Company on that day?"

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Secondly, Dr. de Zoysa stated that only Malawana refused to become a shareholder. It is not correct that all the plaintiffs refused to become shareholders. In answer to Court Dr. de Zoysa, the Chairman of the Board of Directors—an Advocate—stated he did not know who gave instructions for the answers filed. He even stated that he was ignorant of what the answers were that have been filed.—Can a Director be so ignorant of the affairs of the Company and be so indifferent about a number of cases brought against the company, as not to know what the defence was—more especially when he was to be a witness at the trial and represent the company? Yet this is what Dr. de Zoysa wants one to believe.—Paragraph 5 of the answer was read out to him.—He said it was not true or correct. "It was not a directors meeting." Here, I feel compelled to say the lawyer and advocate speaks and not the doctor of philosophy! This is to build up a defence in law.—But, the minute book (P59) states that it was a meeting of the directors!—How can Dr. de Zoysa say it was not? Then, because the minute book cannot support him he has to state that all the plaintiffs did not refuse shares. It was pointed out to Dr. de Zoysa that nowhere in the answer is the defence now put forward, taken, namely that the plaintiffs asked for shares on special conditions. He was not aware of that situation, but admitted that if he were giving instructions he would have made special mention of that fact. This defence is a new one to meet the situation which has been established by all the documents—and there is not a scrap of paper to support this new defence.

How did the company act after the 17th November? Without waiting for the plaintiffs—except Malawana—to "notify their consent in writing," they promptly sent all the plaintiff's cheques. Mr. Jayasena who had time to study Dr. de Zoysa's evidence given earlier stated in evidence "it is not true that all the plaintiffs were prepared to accept shares" on 17th November. He would not say all the plaintiffs refused shares. In cross-examination, he had to stand by the minute book. Jayasena's evidence shows how the company acted." "On the next day 18-11-43—we sent cheques to the various owners." Is not this clear proof that the meeting of 17-11-43 was a farce and that the Company had all along intended and made up their minds and passed resolutions not to give the plaintiffs shares. Jayasena stated "Before we got the consents we sent the cheques." Jayasena stated "all throughout they were asking for shares." Some returned the cheques and asked for shares "according to what transpired at the meeting." Yet they were not given shares.

In regard to the present defence put forward that the plaintiffs wanted shares on special conditions, Jayasena admitted there were no letters, or minutes or record of any kind to prove this. It is not possible to

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accept this defence. In fact, none of the issues dealt with this entirely new defence—and no issue at all was raised on paragraph 5 of the answer—that the plaintiffs refused to become shareholders.

I have therefore no difficulty in deciding all the issues in favour of the plaintiffs thus :

1. Yes. 2. Yes. 3(a) Yes. (b) Yes. 7. Yes.

The greatest difficulty in these cases is to decide what damages each plaintiff is entitled to.

The defendant company is being run in a most unusual way.—They have appointed branch managers or agents who run their part of the service as sole proprietors rendering no accounts whatever to the company as to their expenses &c. and paying to the company 10 per cent. of the gross income, the manager of the branch taking 90 per cent. for himself. Thus the shareholders will only share in the 10 per cent.!

It was admitted by Jayasena that the Income Tax Department did not accept this method of showing the income of the Company and as and for Excess Profit Duty the company was called upon to pay even more than a lakh, on the basis that the profits made by the branch managers should be reckoned as the profits of the company.

The balance sheet of the company for the year 1943 to 1944 (P11) is very illuminating.—On the expenditure side the largest item is “Agencies’ Fees. Rs. 1,508,938·77”.—This represents the amount paid to or taken by the agents or Branch Managers out of the “gross takings of 1,676,647·38” appearing on the income side.

It is not for this Court to question the way in which any company is run.—But for the purpose of assessing damages is it permissible from these figures in the balance sheet to state what a reasonable profit each plaintiff had the right to expect if the company was run in the normal way?

The next largest item on the expenditure side is “Depreciation Rs. 124,179.”

If as Dr. de Zoysa and Jayasena stated that all expenses of running repairs and even replacements are paid by the branch managers why then should “depreciation” be charged up to the company? Counsel for plaintiffs characterized the balance sheet as fictitious. I think the comment is fair and just. The Income Tax Department thought so. In their view the profit should at least have been two lakhs. On this basis the shareholders should have at least 50 per cent. as profit.—It is not possible to be precise on the amount of damages which each plaintiff would be entitled to.—One can only make an estimate approximately. In the circumstances of this case 50 per cent. per annum on the value of shares would be a fair and reasonable amount to be awarded as damages.

There is one other matter which may be referred to specially—although it has been touched on earlier.—That is the defence in law raised in issue 7. It was contended that the agreement pleaded in

paragraph 3 of the plaint was not valid in law and binding on the defendant-company in the absence of a resolution of the Board of Directors.

This defence was taken but half heartedly, probably due to the fact that it could not be maintained either in fact or in law.

On the question of fact as to whether there was a resolution of the Board of Directors, I have already referred to the minutes of the meeting of Directors held on 24th August, 1943 (P51) where "It was resolved to allot shares to those who have surrendered their vehicles to the company." It is an admitted fact that all the plaintiffs had surrendered their vehicles to the company.

But even if there were no resolution of the Board of Directors a company can in law enter into contracts through their Directors acting with authority.

I would answer this issue in favour of the plaintiff.

On the question as to whether Mr. Malawana refused to accept shares on the 17th November, 1943, on my findings on the issues, nothing turns on this. In fact, there was no issue on paragraph 5 of the answer, because if there was a valid agreement previously, there would have to be a valid rescission of that contract. If, however, it were necessary to find whether even Mr. Malawana refused to become a shareholder on 17-11-43 I would prefer to accept the evidence of the plaintiffs and Mr. Malawana, for the reasons already given.

I would therefore enter judgment for the plaintiff as prayed for in para (a) of the prayer of the plaint, and for damages at the rate of 50 per cent. per annum on Rs. 5,000 from 18th January, 1943 to date of allotment of shares.

The plaintiff will also be entitled to the costs of this action.

(Sgd.) W. SANSONI,
District Judge.

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No. 9

Decree of the District Court, Colombo.

DECREE.

IN THE DISTRICT COURT OF COLOMBO.

L. A. PERERA of Nittambuwa in Veyangoda.....*Plaintiff*

No. 15925/M.

vs.

THE SRI LANKA OMNIBUS COMPANY, LIMITED,

Norris Road, Colombo.....*Defendant.*

This action coming on for final disposal before Waldo Sansoni, Esq., District Judge of Colombo, on the 19th day of August, 1946, in the presence of the Proctor for the plaintiff and of the Proctor on the part of the Defendant Company.

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It is ordered and decreed that the Defendant Company do allot and assign to the plaintiff, shares of the said Company, to the value of Rs. 5,000.

It is further ordered and decreed that the Defendant Company do pay to the plaintiff damages at the rate of 50 per cent. per annum on Rs. 5,000 from 18th January, 1943 to date of allotment of shares.

And it is further ordered and decreed that the Defendant Company do pay to the plaintiff, the costs of this action.

(Sgd.) W. SANSONI,
District Judge.

The 19th day of August, 1946.

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Defendant Appellant's Petition of Appeal to Supreme Court.

S. C. No. 376 (f) of 1947.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

L. A. PERERA of Nittambuwa in Veyangoda.....*Plaintiff*

D. C. Colombo No. 15925/M. *vs.*

THE SRI LANKA OMNIBUS COMPANY, LIMITED
of 41, Victoria Buildings, Norris Road, Colombo.....*Defendant.*

THE SRI LANKA OMNIBUS COMPANY, LIMITED
of Norris Road, Colombo.....*Defendant-Appellant* 20

vs.

L. A. PERERA of Nittambuwa in Veyangoda.....*Plaintiff-Respondent.*

To

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES
OF THE SUPREME COURT OF THE ISLAND OF CEYLON.

On this 30th day of August, 1946.

The Petition of Appeal of the Defendant-Appellant abovenamed appearing by D. F. J. Perera its Proctor states as follows:—

1. The plaintiff-respondent sued the defendant-appellant in this action for specific performance of an alleged contract between plaintiff-respondent and defendant-appellant to allot shares to plaintiff-respondent

to the value of Rs. 5,000 in the defendant-appellant company and for recovery of damages at the rate of Rs. 750 per mensem from 18th January, 1943 until allotment of shares.

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2. This action is one of a series of nine actions brought against the defendant-appellant by various plaintiffs for specific performance of alleged contracts to allot shares and for recovery of damages until allotment. The value to the extent of which shares were claimed and the quantum of the damages, however, differed in each case.

3. The defendant-appellant in its answer denied the said contract and pleaded, *inter alia*, that the alleged contract for the enforcement of which action was brought was not valid in law and binding on the defendant-appellant and that in any event the plaintiff-respondent had refused to accept shares. The defendant-appellant accordingly brought to Court the said sum of Rs. 5,100.

4. All the nine actions instituted against the defendant-appellant came up for trial on the same day. It was agreed that all nine cases were to be tried at the same time and that the issues framed in this action were to be the issues in all the other actions and that the evidence led in this action was to be considered as evidence in all the actions.

5. The issues on which the parties went to trial were as follows :—

- (1) Was it agreed between the plaintiff and the defendant at two meetings held on 21-12-42 and 6-1-43 that the plaintiff would transfer to the defendant-company bus No. 817 together with the good-will and route licence in consideration of the allotment to the plaintiff shares in the defendant company to the assessed value of the said bus good-will and route licence.
- (2) Did the defendant in breach of the said agreement fail and neglect to allot shares to the plaintiff in the defendant-company to the said value.
- 30 (3) If issues 1 and 2 are answered in the affirmative is plaintiff entitled to—
 - (a) a decree directing the defendant company to allot to the plaintiff shares of the said value in the defendant-company.
 - (b) damages for failure so to allot up to the date of allotment.
- (4) To what damages is plaintiff entitled to on issue 3.
- (5) Did the plaintiff agree to transfer the said bus good-will and route licence in the circumstances pleaded in paragraph 4 of the answer.
- 40 (6) Was the alleged agreement pleaded in paragraph 3 of the plaint valid in law and binding on the defendant company for the reasons stated in para 10 of the answer.
- (7) If not can the plaintiff have or maintain this action.

6. The case for the plaintiff-respondent was that he was a bus-owner in 1942 ; that at two meetings held on 21-12-42 and 6-1-43 the defendant-appellant which was a Company of bus-owners formed in consequence of

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the promulgation of Ordinance No. 47 of 1942 agreed to allot to the plaintiff-respondent in consideration of the transfer to the defendant-appellant by the plaintiff-respondent of his bus good-will and route-rights shares in the defendant-appellant company to the assessed value of such bus good-will and route-rights ; and that the defendant-appellant had in breach of such agreement refused to allot shares.

7. The case for the defendant-appellant was that at the said meetings no final contract was concluded between the defendant-appellant company and the plaintiff-respondent ; that the defendant-appellant was, however, willing to allot shares to the plaintiff-respondent ; and that the plaintiff-respondent refused to accept shares as the defendant-appellant operated its bus service on the Branch Manager System, which system was disapproved by the plaintiff-respondent.

8. The Learned District Judge by his Judgment dated 19th August, 1946—directed the defendant-appellant to allot shares to the plaintiff-respondent to the value of Rs. 5,000 and ordered the defendant-appellant to pay damages to plaintiff-respondent at the rate of 50 per cent. of the said value per annum from 18th January, 1943 until the date of allotment of shares.

9. Being aggrieved by the said judgment the defendant-appellant begs to appeal therefrom to Your Lordships Court upon the following among other grounds that may be urged by Counsel at the hearing of this appeal :—

- (a) That the said judgment is contrary to law and is against the weight of evidence led in the case.
- (b) That the learned District Judge was wrong in holding that there was a completed contract at the two meetings held on 21-12-42 and 6-1-43. It is submitted that the said meetings were held merely to discuss the terms upon which bus owners might transfer their buses good-will and route rights to the defendant-appellant company.
- (c) That the learned District Judge was wrong in holding that the document P4 which was signed and granted by the plaintiff-respondent and other bus-owners for the purpose of enabling the defendant-appellant to obtain an exclusive licence under Ordinance No. 47 of 1942 constituted in law an acceptance of an alleged offer to allot shares.
- (d) That if as the learned District Judge holds an offer to allot shares was made at the meeting on 21-12-42 it is submitted that such offer was made without due authority from the defendant-appellant company and that such offer and any alleged acceptance thereof do not constitute a contract binding on the defendant-appellant.
- (e) That the plaintiff-respondent and the plaintiffs in the other actions disapproved of the defendant-appellant's system of operating bus services on Branch Managerships. It is, there-

fore, probable as is the fact, according to the evidence of Dr. A. P. de Zoysa and M. Jayasena that they refused to accept shares in the defendant-appellant company.

(f) That it is clearly established by the evidence of the plaintiff-respondent and his witnesses that Malawana was authorised to act as their spokesman at the meeting of 17th December, 1943. The refusal, therefore, by Malawana at such meeting to accept shares in the defendant-appellant company of which there is ample evidence is a refusal by the plaintiff-respondent and the plaintiffs in the other actions.

(g) That the learned District Judge has clearly misdirected himself on the question of the quantum of damages. It is submitted that there was no material whatsoever upon which the learned District Judge could have awarded 50 per cent. of the value of shares per annum as damages.

(h) That the plaintiff-respondent has wholly failed to establish his claim for damages.

WHEREFORE the defendant-appellant prays that the Judgment of the learned District Judge dated 19th August, 1946 be set aside and that the plaintiff-respondent's action be dismissed with costs both in appeal and in the Court below and that Your Lordships' Court be pleased to grant to the defendant-appellant such further and other relief in the premises not herein specially prayed for as to Your Lordships' Court may seem fit.

(Sgd.) D. F. J. PERERA,
Proctor for Defendant-Appellant.

No. 11.

Judgment of the Supreme Court.

S. C. No. 376/M.

D. C. (F) Colombo 15925.

Present: WIJEYEWARDENE, A.C.J. and NAGALINGAM, J.

Counsel: F. A. HAYLEY, K.C., with D. W. FERNANDO for defendant-appellant.

H. V. PERERA, K.C., with SAMARAWICKREME for plaintiff-respondent.

Argued on: 15th, 16th 17th and 25th June, 1948.

Delivered on: 9th July, 1948.

NAGALINGAM, J.

This is an appeal from a judgment of the District Court of Colombo directing the defendant company to allot to the plaintiff shares in the company to the value of Rs. 5,000 and to pay to the plaintiff damages

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at the rate of 50 per cent. per annum on Rs. 5,000 from 18th January, 1943, till date of allotment of shares. This appeal and appeals bearing numbers 377-M, D. C. (F) Colombo 15926, 378-M D. C. (F) Colombo 15927, 379-M D. C. (F) Colombo 15928, 380-M D. C. (F) Colombo 15929, 381-M D. C. (F) Colombo 15930 and 382-M D. C. (F) Colombo 15931 have been consolidated for purposes of argument, as the questions that arise for determination are identical. I shall deal with all the arguments advanced, and it may, therefore, be necessary to refer to certain arguments which may not particularly concern this appeal. The judgment in this case will be treated as the judgment in all the other cases and a copy of this 10 judgment will be filed in each. The plaintiffs-respondents in the other cases will hereinafter be referred to as 'the others' or 'the other owners.'

Prior to the dates material to this action, individual owners were entitled to ply omnibuses along routes in respect of which they were duly licensed. This resulted in unhealthy rivalry and competition between various owners and often led to breaches of the peace and sometimes to the commission of grave offences affecting both person and property. To remedy this unsatisfactory state of affairs, the omnibus service Licensing Ordinance No. 47 of 1942 was enacted, whereunder a single concern consisting either of a Company or of a partnership or of an individual 20 was granted the exclusive road service licence to operate on a particular route. The determination of the particular company, partnership or individual to be licensed was governed by a certain order of priority specified in the First Schedule to the Ordinance. Where the exclusive road service licence was issued to a concern or individual, no other person or persons could operate an omnibus service on that route, thus eliminating even other persons who had previously been wont to operate on the route, unless, of course, such persons became shareholders in the company or partners in the partnership. Relief, however, was provided for any person or persons who had prior to the issue of the exclusive road service 30 licence operated on the route and who had not merged his interests either in the company or partnership by declaring him entitled to compensation against the concern or individual to whom the exclusive road service licence was issued for the loss of rights. In the issue of the exclusive road service licence, the topmost priority was given to a company or partnership which comprised all the operators on the particular route. Next in order of priority came a company or partnership which had within its fold the majority of the operators on the route, the majority being determined not by the number of individuals but by the number of 40 route licences held.

Pausing here, as it is not material for the purpose of this appeal, to consider the remaining order of priority, it will be seen that it was of the utmost importance that when a company or partnership applied for the exclusive road service licence it should have been able to make out to the satisfaction of the licensing authority that at least it held the majority of licences on that route. In order to ensure this majority companies and partnerships went all out to secure the co-operation of as many persons as held road service licences on that route.

The Ordinance came into operation on 27th October, 1942, and the defendant company was incorporated in November of the same year with a view to operate an omnibus service on the route mainly between Colombo and Kandy, which included certain subsidiary routes. The plaintiff was one of those who had been duly licensed to operate an omnibus service along part of the route along which the defendant company proposed to run its service. Shortly after its incorporation, the defendant company invited all the owners who were plying omnibuses on the route along which the defendant proposed to operate to a meeting, offering to allot shares to them in the Company in proportion to the value of their interests, those interests being ascertained on the basis both of the value of the vehicles owned and the route licences held. Shortly after the first meeting, which took place on 21st December, 1942, the company alleged it had been issued the exclusive road service licence to operate on this route—*vide* P2.

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The evidence is that the plaintiff as well as the other owners who attended the meeting all agreed to accept shares in the company and to surrender their vehicles and route licences to the Company. Whether any, and if so what use, the Company made of the consent of the various owners to join the Company in obtaining the exclusive road service licence is not in evidence; but, to put it at the lowest, if the company could not induce any of these owners to become shareholders in it, it had to pay compensation to them, and the evidence is clear on the point that the Company at that date had no liquid assets with which it could render satisfaction to them. It cannot, therefore, be gainsaid that the Company was greatly anxious to see that the owners accepted shares and did not claim compensation from it.

On 6th January, 1943, the plaintiff and the other owners signed documents, of which P4 is a blank form, whereby they consented to the issue of the exclusive road service licence to the Company and, what is more important, *they undertook to take shares in the Company*. This was a document drafted by the defendant Company and placed before the owners for their signature. Too much emphasis cannot be laid on the word 'undertake,' clearly showing that at that date the Company was more than anxious that the owners should accept shares in the Company. This document, on its being signed, it can hardly be contested, embodied a completed contract between plaintiff and the other owners on the one part and the Company on the other, whereby the Company agreed to allot shares to the owners and the owners agreed to accept them. In pursuance of these documents the plaintiff and the other owners delivered over their vehicles and transferred their route licences to the defendant Company at agreed valuations. It is manifest, therefore, that at this date the owners had done everything that was required of them to be done to entitle them to be allotted shares in the Company.

It has been argued that there should have been a formal application for shares before allotment could take place, and as no formal application had been made, the Company was never under obligation to allot shares.

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I cannot accede to this contention. The Company does not appear to have prescribed any particular form of application for shares. But where the company without prescribing any particular mode of application, acting by its directors receives funds, in this case vehicles and route licences which are the equivalent of funds, on the promise of allotting shares, I cannot see that the want of a formal application can be regarded as depriving the plaintiff of the other owners of their rights. If further proof of the affirmation by the Company of the agreement on its part to allot shares were required, the proof is to be found in a resolution of the Company in its minutes dated 24th August, 1943 (P51) whereby it was resolved to allot shares "*to those who have surrendered their vehicles to the Company.*" It is, therefore, plain that the plaintiff and the other owners became entitled to be allotted shares without any further formality.

No explanation has been given by any of the witnesses called on behalf of the defendant company as to why this resolution was not carried into effect. On behalf of the Company it has been contended that the plaintiff and the other owners, though they may have expressed at the commencement their willingness to accept shares, resiled from that position later and declined to accept shares excepting on certain terms which insisted on the management of the business in a way different from that which it had adopted. Even assuming for the purpose of argument that this allegation is correct, it cannot be said that the plaintiff and the other owners had adopted such an attitude prior to 24th August, 1943, for had they so acted, the minutes would have been explicit on the point and would have excluded from the resolution the plaintiff and the other owners, but the resolution did not. The oral evidence led on behalf of the defendant Company in support of its case that the plaintiff and the other owners refused to accept shares has to a large extent reference to the period before August, 1943, but even in regard to the period after August, 1943, the evidence is far from satisfactory in comparison with that led on behalf of the plaintiff and the other owners.

I do not think it necessary to enter into an elaborate discussion of the oral testimony, for the learned trial Judge has discussed the evidence fully. It is only necessary for me to observe that there is ample evidence on record to warrant the trial Court's finding, and I must say that having regard to the evidence as a whole, after giving due weight for discrepancies, it cannot be doubted that the plaintiff and the other owners insisted right along on their receiving shares but that they were questioning the propriety of the method of management of the business adopted by the Company. The criticism of the method of carrying on business by the Company has no bearing on the plaintiff and other owners wanting their shares; in fact there is nothing in the minutes of the meeting of directors of the Company up to 17th November, 1943, which supports the defendant Company's plea that it was the plaintiff and the other owners who did not desire to be allotted shares. On the contrary, whatever is contained in the minutes up to that date clearly points to the circumstance that it was the defendant Company that was averse to allot shares to them.

In the minutes of 17th November, 1943, for the first time, and that in regard to the owner Malawana alone but not in regard to the plaintiff or any of the others, is there a statement that Malawana refused to join the Company as a shareholder, so that in regard to the plaintiff and the other owners excepting Malawana it is obvious that the minutes do not bear out the defence set up by the Company. What is more, even the correspondence between the parties leads one to no other conclusion. As regards the entry in the minutes relating to Malawana the learned trial Judge has discounted the correctness of that entry and I do not think it is possible to take a view different from that arrived at by the learned trial Judge, especially when one bears in mind that Malawana and the other owners had, before meeting the directors on 17th November, 1943, all attended a meeting of their own earlier in the day, at which they were all unanimously of the view that any attempt by the Company to pay them off should be thwarted; besides, Malawana's conduct in returning the cheque forwarded to him on 18th November, 1943, by his letter P19 of 20th November, is further corroboration of this view. I am, therefore, of opinion that the learned trial Judge's finding that it was the defendant Company that refused to allot shares and not the plaintiff who refused to accept shares is correct. It has not been suggested that there is any impediment in the way of the Company allotting the shares claimed by the plaintiff by reason either of the limitation of the number of persons who could hold shares in it, as embodied in its Articles of Association (the defendant is a private limited liability company), or by the non-availability of shares which could be allotted. I would, therefore, affirm the order of the trial Court compelling the defendant company to allot shares to the plaintiff.

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If, therefore, the defendant Company was in default in allotting shares to the plaintiff, what damages is the plaintiff entitled to? The contention has been advanced on behalf of the defendant Company that the plaintiff would be entitled to no more than the dividends declared by the Company subsequent to the date when the shares should have been allotted to the plaintiff and, at best, the interest on those dividends till payment.

Where a Company draws up its balance sheet in accordance with resolutions passed by it from time to time regarding the management of its business and the accounting of its finances, the damages which it would be liable to pay to a party to whom it failed to allot shares would properly be determined by the dividends declared as disclosed in its balance sheet, for those dividends may fairly and reasonably be considered as the damages naturally arising from the breach of contract committed by the Company. But here the plaintiff contends that the balance sheet drawn up is not in accordance with the resolutions of the Company, that the balance sheet contains obvious inaccuracies and, therefore, before damages on this basis could be computed, there should be a rectification of the errors contained therein, especially as by the non-allotment of shares to the plaintiff, he and the others were rendered

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 —continued.

incapable of having the inaccuracies in the balance sheet rectified, and, if need be, by persuading some of the directors themselves, for it is pointed out that one or two of the directors who were also some of the largest shareholders were not altogether antagonistic to the plaintiff and the other owners.

It is further urged that it was this amendment of the balance sheet that the plaintiff had in mind when on the 24th June, 1946, he agreed to have his claim for damages assessed on the basis of the figures in the balance sheet. It seems to me that to restrict damages to the bare dividend as shown on the face of the balance sheet and to interest thereon would not adequately compensate the plaintiff for the loss sustained by him, for this would leave out of consideration the right and the ability of the plaintiff and the other owners to have had the accounts rectified when they were presented. On the other hand it may be problematical as to whether the plaintiff and the others would have been able to persuade or not the major shareholders to their way of thinking. The court must in these circumstances determine as fairly as it could the damages that should be awarded, not losing sight of the principle that a wrongdoer should not be placed in a position of advantage by his wrongdoing. I think it would be proper to assume that the shareholders would have done what was right in the event of any obvious discrepancy in the balance sheet being pointed out to them, and one cannot ignore entirely the possibility of a conversion by the plaintiff and the other owners of one or two of the directors themselves as contended on their behalf. Having regard to all these factors, I think it but legitimate and proper that the dividends should be arrived at after making the necessary amendment in the balance sheet in respect of errors and inaccuracies but not negating the resolutions passed by the Company at any time. It is said that the learned trial Judge awarded damages on some such basis, but on behalf of the plaintiff counsel candidly admits that he has not been able to discover the basis upon which the trial Judge decreed 50 per cent. per annum on the share capital; as damages.

The business of the Company, according to the defence, was carried on by appointing as agents the directors themselves to run services on the entire route allotted to it by dividing it up into sections lettered A, B, C, D, E, F and G, and placing each of the sections under the management and control of one of the directors. These directors who were appointed agents of the Company were called Branch Managers, and each branch manager had, so to speak, a monopoly of running the omnibus service on the section allotted to him. He received in the first instance the entire takings on that section, he kept his own books of account, he employed his own servants, he attended to the repairs of the vehicles himself, he paid for the outgoings such as petrol and oil, and both the directors who gave evidence on behalf of the defendant Company were also agreed, and their evidence on the point is fully corroborated by the minutes of the special general meeting of the Company held on 22nd January, 1943, (*vide* P2) that each branch manager had to effect replace-

ments of buses, that is to say, where the omnibuses became old and unserviceable, the obligation to replace them by new vehicles, was a liability imposed on the branch manager. In order to enable a branch manager to discharge all these obligations, he was allowed to appropriate no less than 90 per cent. of the gross takings of that branch, the remaining 10 per cent. being paid to the Company as its income; out of the 90 per cent. of the gross takings the branch manager, after making all necessary disbursements, retained for his personal use, whatever sum was left over, and this sum cannot be inconsiderable when one bears in mind that 10 90 per cent. of the gross takings in one year amount to one and a half million rupees. The 10 per cent. of the gross takings that was paid by each of the branch managers represented the total income of the company as such. The position, therefore, is that the Company was not the owner or proprietor of any omnibus nor was it directly concerned with the running of any of the services on its route. It had to pay out of its income its expenses, which would consist of all the items on the left hand side of the income and expenditure account shown in document P11, excepting the three items shown as insurance, depreciation and surplus. It is difficult to see why the insurance of motor vehicles should be regarded 20 as a proper item of disbursement by the Company but the plaintiff himself has not sought an explanation of this item at the trial and I do not, therefore, propose to treat it as an item the debiting of which to this account should be reopened. In regard to the item of depreciation amounting to Rs. 124,179, the explanation tendered by the witness Jayasena is that the sum of Rs. 124,179 was "struck off as depreciation." He did not say it was depreciation on what, for it certainly could not be depreciation on vehicles, for the Company had no vehicles of its own, and the vehicles belonged to the various agencies which ran the service on the various sections and the replacement of which was the liability 30 of the agencies. The witness probably appreciated this himself for he admitted immediately thereafter that the *sum of Rs. 124,179 was profit of the Company*. The plaintiff, therefore, says that the profit of the Company should be treated as including the sum of Rs. 124,179 in addition to the sum of Rs. 10,000 shown in the income and expenditure account in document P11, thus revealing the true profit at Rs. 134,179.

At the time of incorporation, *vide P3*, 5,900 shares had been allotted. On 9th November, 1943, at a directors' meeting further shares aggregating to 710 were allotted among certain others. The plaintiff and the other owners would be entitled to no less than 473 shares on the basis of the 40 share capital contributed by them. The total number of shares, therefore, in the Company amounted to 7,083. Dividing the profit of Rs. 134,179 among them, each share would be entitled to a dividend of Rs. 19.99, say Rs. 20. As each share is Rs. 100 in value, the dividend would be 20 per cent. for an year.

For these reasons I would affirm the judgment of the District Court, subject to the modification that for the figure 50 the figure 20 should be substituted therein. As the respondent has succeeded on the main issue

No. 11
Judgment of
the Supreme
Court
9-7-48
—continued.

with regard to the liability of the defendant to allot shares but has failed partially on the question of damages, I would direct that the defendant should pay to the respondent half costs of appeal.

(Sgd.) C. NAGALINGAM,
Puisne Justice.

WIJEYEWARDENE, A.C.J.
I agree.

(Sgd.) E. A. L. WIJEYEWARDENE,
Acting Chief Justice.

No. 12
Decree of the
Supreme
Court
9-7-48

No. 12.

Decree of the Supreme Court.

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, KING,
DEFENDER OF THE FAITH.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

S. C. No. 376/1947 (F).

L. A. PERERA of Nittambuwa*Plaintiff-Respondent*
Against

THE SRI LANKA OMNIBUS COMPANY LIMITED
of Norris Road, Colombo.....*Defendant-Appellant.* 20

Action No. 15925/M. District Court of Colombo.

This cause coming on for hearing and determination on the 15th, 16th, 17th and 25th June and 9th July, 1948, and on this day, upon an appeal preferred by the defendant before the Hon. Mr. E. A. L. Wijeyewardene, K.C., Acting Chief Justice, and the Hon. Mr. C. Nagalingam, K.C., Puisne Justice of this Court, in the presence of Counsel for the Appellant and Respondent.

It is considered and adjudged that the judgment entered in this action by the District Court of Colombo be and the same is hereby affirmed, subject to the modification that for the figure 50 the figure 20 should be substituted therein.

It is directed that the defendant do pay to the respondent half costs of appeal.

Witness the Hon. Mr. Edwin Arthur Lewis Wijeyewardene, K.C., Acting, Chief Justice, at Colombo, the 9th day of July, in the year of our Lord One thousand Nine hundred and Forty-eight and of Our Reign the Twelfth.

(Sgd.) CLARENCE DE SILVA,
Registrar, S. C.

No. 13.

Application for Conditional Leave to Appeal
to Privy Council.

No. 13
Application
for Condi-
tional Leave
to Appeal to
Privy
Council
2-8-48

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

In the matter of an Application for Conditional Leave to
appeal to His Majesty The King in Council.

L. A. PERERA of Nittambuwa in Veyangoda.....*Plaintiff*

vs.

10 THE SRI LANKA OMNIBUS COMPANY LIMITED
of Norris Road, Colombo.....*Defendant*

S. C. 376 F of 1947. *and*
D. C. Colombo 15925/M.

THE SRI LANKA OMNIBUS COMPANY LIMITED
of Norris Road, Colombo.....*Defendant-Appellant*

vs.

L. A. PERERA of Nittambuwa in Veyangoda.....*Plaintiff-Respondent.*

To

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES
OF THE HONOURABLE THE SUPREME COURT OF THE
20 ISLAND OF CEYLON.

On this Second day of August, 1948.

The Petition of the defendant-appellant abovenamed appearing by
Don Franciscuge James Perera, its Proctor states as follows :—

1. That feeling aggrieved by the judgment and decree of this
Honourable Court pronounced on the 9th day of July, 1948 the defendant-
appellant is desirous of appealing therefrom to His Majesty the King
in Council.

2. That the said judgment is a final judgment and the matter in
dispute on the appeal amounts to or is of the value of Rs. 5,000 or upwards.

30 Wherefore the defendant-appellant prays for Conditional Leave to
appeal against the judgment of this Honourable Court dated the 9th
day of July, 1948 to His Majesty The King in Council.

D. F. J. PERERA,
Proctor for Defendant-Appellant.

No. 14
Decree
Granting
Conditional
Leave to
Appeal
to Privy
Council
30-9-48

No. 14.

Decree Granting Conditional Leave to
Appeal to Privy Council.

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS,
KING, DEFENDER OF THE FAITH.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

L. A. PERERA of Nittambuwa in Veyangoda.....*Plaintiff-Respondent*
Against

THE SRI LANKA OMNIBUS COMPANY LIMITED 10
of Norris Road, Colombo.....*Defendant-Appellant.*

Action No. 15925 (S. C. No. 376). District Court of Colombo.

In the matter of an application by the defendant abovenamed dated 2nd August, 1948 for Conditional Leave to appeal to His Majesty the King in Council against the Decree of this Court dated 9th July, 1948.

This matter coming on for hearing and determination on the 30th day of September, 1948, before the Hon. Mr. E. A. L. Wijeyewardene, K.C., Acting Chief Justice, and the Hon. Mr. A. R. H. Canekeratne, K. C., Puisne Justice of this Court, in the presence of Counsel for the Petitioner and Respondent. 20

It is considered and adjudged that this application be and the same is hereby allowed upon the condition that the applicant do within one month from this date :

1. Deposit with the Registrar of the Supreme Court a sum of Rs. 3,000 and hypothecate the same by Bond or such other security as the Court in terms of section 7 (1) of the Appellate Procedure (Privy Council) order shall on application made after due notice to the other side approve

2. Deposit in terms of the provisions of section 8 (a) of the Appellate Procedure (Privy Council) Order with the Registrar a sum of Rs. 300 30 in respect of fees mentioned in section 4 (b) and (c) of Ordinance No. 31 of 1909 (Chapter 85).

Provided that the applicant may apply in writing to the said Registrar stating whether he intends to print the record or any part thereof in Ceylon, for an estimate of such amounts and fees and thereafter deposit the estimated sum with the said Registrar.

Witness the Hon. Mr. Edwin Arthur Lewis Wijeyewardene, K.C.,
Acting Chief Justice, at Colombo, the thirtieth day of September, in the
year of our Lord One thousand Nine hundred and Forty-eight and of
Our Reign the Twelfth.

(Sgd.) CLARENCE DE SILVA,
Registrar, S. C.

No. 14
Decree
Granting
Conditional
Leave to
Appeal to
Privy
Council
30-9-48
continued.

No. 15.

Application for Final Leave to Appeal to Privy Council.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

No. 15
Application
for Final
Leave to
Appeal to
Privy
Council
28-10-48

10 In the matter of an Application for Final Leave to appeal
to His Majesty the King in Privy Council.

L. A. PERERA of Nittambuwa.....*Plaintiff*

vs.

THE SRI LANKA OMNIBUS COMPANY LIMITED
of Norris Road, Colombo.....*Defendant*

S. C. 376 (F) *and*
D. C. Colombo 15925.

THE SRI LANKA OMNIBUS COMPANY LIMITED
of Norris Road, Colombo.....*Defendant-Appellant*

20 *vs.*

L. A. PERERA of Nittambuwa.....*Plaintiff-Respondent.*

To

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUSTICES
OF THE HONOURABLE THE SUPREME COURT OF THE
ISLAND OF CEYLON.

On this 28th day of October, 1948.

The humble Petition of the defendant-appellant abovenamed appearing
by Don Franciscuge James Perera its Proctor states as follows :—

30 1. That the appellant on the 30th day of September, 1948 obtained
Conditional Leave to appeal to His Majesty the King in Council against
the judgment of this Court pronounced on the 9th day of July, 1948.

No. 15
Application
for Final
Leave to
Appeal to
Privy
Council
28-10-48
—continued.

2. That the Appellant has in compliance with the conditions on which such leave was granted deposited with the Registrar of this Court :—

- (a) A sum of Rs. 3,000 and hypothecated by bond the said sum of Rs. 3,000 on the 22nd October, 1948 on account of security for costs of appeal in terms of Section 7 (1) of the Appellate Procedure (Privy Council) Order 1921.
- (b) A sum of Rs. 300 on the 22nd day of October, 1948 as costs of transcribing the record in terms of Section 8 (a) of the Appellate Procedure (Privy Council) Order 1921.

Wherefore the appellant prays that it be granted Final Leave to appeal against the judgment of this Court dated 9th July, 1948 to His Majesty the King in Council.

(Sgd.) D. F. J. PERERA,
Proctor for Defendant-Appellant.

No. 16
Decree
Granting
Final Leave
to Appeal to
Privy
Council
15-2-49

No. 16.

Decree Granting Final Leave to Appeal to Privy Council.

**GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS,
KING, DEFENDER OF THE FAITH.**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON. 20

L. A. PERERA of Nittambuwa.....*Plaintiff-Respondent*

Against

THE SRI LANKA OMNIBUS COMPANY LIMITED
of Norris Road, Colombo.....*Defendant-Appellant.*

Action No. 15925.

(Supreme Court No. 376 (Final)).

District Court of Colombo.

In the matter of an application by the defendant-appellant dated 28th October, 1949 for Final Leave to appeal to His Majesty the King in Council against the Decree of this Court dated 9th July, 1948.

This matter coming on for hearing and determination on the 15th day of February, 1949, before the Hon. Mr. A. R. H. Canekeralne, K.C., Puisne Justice and the Hon. Mr. R. F. Dias, Puisne Justice of this Court, in the presence of Counsel for the Petitioner.

No. 16
Decree
Granting
Final Leave
to Appeal to
Privy
Council
15-2-49
—continued.

The applicant having complied with the conditions imposed on him by the Order of this Court dated 30th September, 1948, granting Conditional Leave to Appeal.

It is considered and adjudged that the applicant's application for Final Leave to appeal to His Majesty the King in Council be and the same is hereby allowed.

Witness the Hon. Mr. Edwin Arthur Lewis Wijeyewardene, K.C., Chief Justice, at Colombo, the 15th day of February, in the year of our Lord One thousand Nine hundred and Forty-nine and of Our Reign the Thirteenth.

(Sgd.) CLARENCE DE SILVA,
Registrar, S. C.

Exhibits

P 2.
Letter
2-1-42

PART II.

EXHIBITS.

P 2. Letter.

P 2.

SRI LANKA OMNIBUS COMPANY, LIMITED.

P. O. Box 155,
Colombo, 2nd January, 1942.

Dear Sir,

It has been decided to convene a meeting of all the Owners plying on the Colombo-Kandy and Subsidiary Routes for Wednesday the 6th inst. and we shall be glad if you will kindly attend. It will be necessary to bring the Certificates of Registration of the Vehicles owned by you to enable them to be transferred in the name of the company. Licences have now been issued to us and we have been asked to start operating as a Company immediately.

We are, Dear Sir,
Sri Lanka Omnibus Co., Ltd.,
(Sgd.) DONALD PEREIRA,
Secretary.

L. A. Perera, Esq.,
Ihala Biyanwila,
Kadawatte.

P 1. Letter.

20

P 1.
Letter
16-12-42

P 1.

SRI LANKA OMNIBUS COMPANY LIMITED.

41 2/3, Victoria Building,
Norris Road, (P. O. Box 155),
Colombo, December 16, 1942.

Dear Sir,

A meeting of all owners on the Colombo-Kandy Road has been fixed for Monday, the 21st instant at 11 a.m. at this office, and I shall be glad if you will kindly attend.

At this meeting the final arrangements in connection with the running of the different services will be arranged. It is in your own interests to attend this meeting as according to the New Motor Ordinance no licence will be issued to individual owners from 1-1-1943.

Yours faithfully,
Sri Lanka Omnibus Company Ltd.,
(Sgd.) DONALD PEREIRA,
Secretary.

L. A. Perera, Esq.,
Ihala Biyanwila,
Kadawatte.

P 3. ProspectusExhibits
P 3.
Prospectus

P 3.

SRI LANKA OMNIBUS COMPANY, LIMITED

Incorporated under Ordinance 51 of 1938

(Liability of Members is Limited)

Authorised Capital 10,000 Shares of Rs. 100 each	...	Rs.	1,000,000
Subscribed Capital on Memorandum 5,850 Shares as			
90 % paid at Rs. 100 each	...	..	526,500
Promoters as 90 % paid in consideration of work done			
by them as Promoters, 50 Shares	...	..	4,500

10 4,100 Shares are now available for subscription among Omnibus owners of Kandy-Colombo and subsidiary routes.

Chairman Board of Directors :

DR. A. P. DE ZOYSA, B.A. Phd., M.S.C., M.M.C., and Bar-at-law.,
"Northwood," Colpetty.

Directors :

M. JAYASENA, Esq., Peliyagoda, Kelaniya.
MUHDM. B. J. FERNANDO, Cotta Road, Borella.
W. K. FERNANDO, Esq., Mawanella.
P. DON FRANCIS ALWIS, Esq., Mawanella.

20 *Manager :*

DONALD PEREIRA, Esq.

Secretary :

D. J. F. OBEYESEKERE, Esq.

Bankers :

BANK OF CEYLON, Colombo.

Registered Office :

41 2/1, Victoria Building, Norris Road, Colombo.

P 4. Agreement Form

P 4.

SRI LANKA OMNIBUS COMPANY, LIMITED.

P 4.
Agreement
Form

30 I,.....of..... owner of motor omnibus whose distinctive numbers are mentioned below, consent to the issue of the Exclusive Road Service Licence, to the above company in terms of section 2 (b) of the First Schedule of Ordinance No. 47 of 1942. I undertake to take shares in the above company to the value of my omnibuses mentioned below.

(Portion in Sinhalese characters)

Exhibits

P 12.
Letter
2-1-43

P 12.

P 12. Letter.

SRI LANKA OMNIBUS COMPANY, LIMITED.

2nd January, 1943.

Dear Sir,

It has been decided to convene a meeting of all Owners plying on the Colombo-Kandy and Subsidiary Routes on Wednesday the 6th instant at 2 p.m. and I shall be glad if you will kindly attend. It will be necessary to bring the certificates of Registration of the Vehicles owned by you to enable them to be transferred in the name of the Company. Licences have now been issued to us and we have been requested to start operating as a Company immediately.

We are Dear Sir,
Yours faithfully,
(Sgd.) DONALD PEREIRA,
Secretary.

P 13.
Letter
4-1-43

P 13.

P 13. Letter.

SRI LANKA OMNIBUS COMPANY, LIMITED.

January 4, 1943. 20

Dear Sir,

Further to our letter of the 2nd instant, we shall be glad if you will bring with you the licences for 1942, of the vehicles owned by you.

This is essential to meet the requirements of Ordinance No. 47 of 1942.

Yours faithfully,
Sri Lanka Omnibus Company Ltd.
(Sgd.) DONALD PEREIRA,
Secretary.

D. E. Malawana, Esq.,
Potuhera,
Kurunegala.

30

P 52.
Minutes of
Meeting
5-1-43

P 52.

P 52. Minutes of Meeting.

(3) On Page 4 of the Book.

5th January, 1943.

Directors Present—

It was decided that D. J. F. Obeyesekera be appointed the Secretary of the Company on a monthly salary of Rs. 100.

It was decided that branches of the Company be established called A, B, C, D, and E. It was decided that the Bank of Ceylon be and hereby authorised and requested to pay all Cheques—Cheques to be signed by 2 Directors.

It was decided that the Company should decide before it takes a loan from any one, the amount of the loan and the person from whom the loan to be taken the Directors at a Directors' meeting could make such decisions.

Exhibits
p 52.
Minutes of
Meeting
5-1-43
—continued.

It was decided that the following loans be taken and that interests be paid at 5% from Muh. B. J. Fernando Rs. 9,000, Messrs. Alwis and W. E. Fernando Rs. 13,500, M. Jayasena Rs. 27,500. It was resolved to buy 18 Omnibuses from B. J. Fernando, 27 Buses from P. D. F. Alwis and W. K. Fernando and 65 Buses from M. Jayasena.

10 It was also decided to allot 3,250 shares to M. J. 900 shares to B. J. 850 shares to W. K. Fernando all the above shares to be treated as 90% of them as paid.

(Sgd.) M. J.,
B. J.,
W. K. Fernando,
Alwis,
Zoysa,
D. J. F. Obeyesekera.

P 5. Letter.

20 P 5.

SRI LANKA OMNIBUS COMPANY, LIMITED.

P 5.
Letter
9-1-43

41, 2/1 Victoria Buildings,
Norris Road, Colombo,
9th January, 1943.

Dear Sir,

We shall thank you to kindly let us have the following particulars by return of post as the matter is urgent :

- (1) Distinctive numbers, H. P. and make of all the Omnibuses registered in your name.
- 30 (2) Petrol Controllers reference number in respect of the petrol issued to you for these buses, also the number of gallons issued to you for last month.

Your early reply will be much appreciated.

Yours faithfully,
Sri Lanka Omnibus Co., Ltd.
(Sgd.) DONALD PEREIRA,
Manager.

Thanking you.

L. A. Perera, Esq.
40 Kadawatte.

Exhibits

P 53. Minutes of Meeting.P 53.
Minutes of
Meeting
15-1-43**P 53.**

4th Page 6.

Minutes of meeting of Directors held on 15th January, 1943, at 5 p.m.
Present: M. J., B. J., P. D. F., Alwis, W. K. Fernando and A. P. de Zoysa.

The Company bought from B. J. Fernando 12 Omnibuses and goodwill of 6 omnibuses for Rs. 87,000 also Company bought from Messrs. Alwis and W. K. Fernando 22 omnibuses and goodwill for 5 omnibuses and a new omnibus (unregistered) for Rs. 156,500 and from Mr. Jayasena 41 omnibuses the goodwill of 24 buses and a new omnibus (unregistered) for Rs. 318,000. (Sgd.) 6 of them.

Pencil Note—

Value of a Bus	...	Rs. 6,000
Goodwill at	...	„ 2,500
New Vehicle	...	„ 12,000

P 58.
Share
Certificate
17-12-43**P 58. Share Certificate.****P 58.**

Share Certificate No. 21.

No. of Shares 25.

SRI LANKA OMNIBUS COMPANY LIMITED.

(Incorporated in Ceylon under the Companies' Ordinance No. 51 of 1938.) 20

The Liability of Members is Limited.

Authorised Capital Rs. 1,000,000

Divided into 10,000 Shares of Rs. 100 each.

THIS is to Certify that H. G. Martin Dias, Esq., of Giriulla is the registered holder of twenty-five Ordinary Shares numbered 6867 to 6891 inclusive in the above named Company, subject to the rules and regulations of the Company, and that the sum of Rupees Ninety (Rs. 90) has been paid up upon each of the said Shares.

Given under the Common Seal of the Company this Seventeenth day of December One thousand Nine hundred and Forty-three. 30

(Sgd.) A. P. DE ZOYSA,
„ W. K. FERNANDO,
Directors.

(Sgd.) D. J. F. OBEYESEKERA,
Secretary.

N. B.—A transfer of the above shares can be effected only by a Transfer duly executed and Registered in the Books of the Company and the name of the proposed Transferee must be approved by the Board of Directors before the transfer can be made. Forms of Transfer can be obtained at the Registered Office of the Company.

P 41. Receipt.**P 41.**

SRI LANKA OMNIBUS COMPANY, LIMITED.

Exhibits

P 41.
Receipt
17-1-43Branch Office,
Mawanella, 17-1-43.

Bus No. D 2848 has been brought to our premises fitted with the following old tyres :—

10 32 × 6 Tyre 5048 Bridge Stone
 32 × 6 „ 01D147230 B.S.
 32 × 6 „ 10N9737 J. B. S.
 32 × 6 „ 145599 Firestone
 6·00 × 20 97964749 Good Year

(Sgd.) Illegibly.

For SRI LANKA OMNIBUS Co., LTD.

P 6. Acceptance of Offer.**P 6.**

L. A. Perera.

Pahala Biyanwila,
Kadawatta, 18th January, 1943.P 6.
Acceptance
of offer
18-1-43

20 MESSRS. THE SRI LANKA OMNIBUS CO., LTD.,
Colombo.

Dear Sir,

I hereby accept the figures offered me for my omnibus together with goodwill as follows :—

Chevrolet Bus No. Z-817 together with goodwill	... Rs. 3,250·00
The goodwill of buses Z 5007 and Z 817	... „ 1,750·00

Total Rs.	5,000·00
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P 56. Minutes of Meeting.**P 56.**

Page 8.

P 56.
Minutes of
Meeting
22-1-43

30 Minutes of the general meeting held on 22nd January, 1943, at 11 a.m. at Regd. Office all the shareholders of the Company, *i.e.* Messrs. M. J., B. J., Alwis, W. K. F., A. P. de Zoysa and D. J. F. Obeyesekera were present. Dr. Zoysa presided—It was agreed by all the members entitled to attend and note at the meetings to dispense with the notice required by section 115 of the Ordinance No. 15 of 1938.

The following special resolution was passed unanimously that regulations 2(a), 2(b), 2(c) of the Company's Ordinance Articles of Association be repealed and replaced by the following regulations which shall be numbered as Reg. 108.

*

Exhibits
 P 56.
 Minutes of
 Meeting
 22-1-43
 —continued.

The Company shall be a private company, and (a) restricts the rights to transfer its shares, (b) limits the number of members to 50 etc.

(c) prohibits any invitation to the public to subscribe for its shares. Above resolution was proposed by B. J. F. and seconded by Alwis. The following resolution was unanimously passed that this meeting confirms the appointment of M. J., B. J., Alwis, W. K. Fernando and Dr. Zoysa as the Directors of the Company, proposed by Obeyesekera and seconded by W. K. F.

The following was unanimously passed :

M. J. be appointed the Managing Director of A Branch, B. J. F. of B, W. K. F. and Alwis of C, L. R. Perera of D, W. D. M. Pabilis Appuhamy of E proposed by D. J. F. Obeyesekera and seconded by Alwis.

B. J. proposed that F branch be opened, M. J. seconded it and was carried W. K. F. proposed and B. J. seconded that omnibuses belonging to the company be left in charge of different branches under Managers and Managing Directors and that they should maintain repair and replace the omnibuses under his charge and ply the buses according to time table and such regulations and conditions as are imposed by the Commissioner of Motor Cars and by Motor Car Ordinance.

The said Managers and Managing Directors should pay the employees and expenses necessary to run the said Omnibuses except Insurance licensing fees supervisors, time-keepers also they should pay to Company Re. 1 per day for every bus. They should garage the omnibuses in suitable garages, the company will pay 90% of the collections from omnibuses for the expenses and allowances as Managing Directors.

Above was unanimously passed.

Sgd. 6 of them
 ALWIS, B. J., W. K. F., M. J.,
 ZOYSA and OBEYESEKERA.

P 8.
 Letter
 23-1-43

P 8. Letter.

P 8.

January 23, 1943.

The Manager,
 SRI LANKA BUS CO., LTD.,
 Colombo.

Dear Sir,

I handed over bus No. Z817 on the 18th of this month to you at an agreed valuation, as regards the bus and goodwill. This I did because under the law you have the exclusive licence and we cannot run our buses for our profit. To keep the bus in garage would be loss not only of income but to the bus itself as a result of non-user. I have not been able to find

out the plan or scheme on which the Sri Lanka Bus Co., Ltd. is going to operate. The law has compelled us either to give up bus business altogether which has been our living for so many years and take compensation through you or to join you as a shareholder. I am not willing to sacrifice my means of livelihood by taking compensation by saying good-bye to bus business. I want to continue to live by the income of my transport business. I have been trying my best to get from you the basis on which you are going to work. As a shareholder I am entitled to do this and you will be good enough to inform me what your scheme of

10 working is. Although not in writing, I get replies to questions like this. That there is one branch of the company with its garage at the former Emjay Garage at Peliyagoda. That there is another branch at the former garage of Muhandiram B. J. Fernando at Cotta Road. That there is another branch at Dekatana towards the terminus of the Biyagama road bus service. That there is another branch at Attanagalla, the head-quarters of the former Sri Medura Bus Service. That there is another branch at the former garage of the L. S. Bus Co. at Mawanella. That there is one more branch in charge of Mr. S. A. Samarasinghe between Kandy and Kadugannawa. That these branches are to operate

20 bus services managed by Branch Managers each branch, acting independently for traffic operations, for repairs for income and accounts. That 90% of the income of each branch is to be appropriated by each branch for expenditure and pay, including pay of Branch Managers. That each Manager is to contribute monthly a 10 per cent. of its income which is to go into the account of the Sri Lanka Bus Co. and that the allocation of dividends to different shareholders will be according to the shares allotted out of the 10 per cent. that is collected by the centralised funds for purposes of receiving this 10 per cent. and keeping company accounts only to deal with the income of 10 per cent. and its disposal for

30 the needs of the company including the payments to directors and all general expenditure in connection with the company, income tax, and that any balance be distributed among the shareholders. Please be good enough to let me know in writing how far this information of mine is correct. If I may put a few questions, how many Managers are there? Who are these managers and where are the Branch Managers? Do the Directors look into and supervise accounts of each branch? Who signs cheques at each of the branches? Is the information that 90 per cent. is appropriated by the Branches is correct, if so, how has it been calculated that every branch must necessarily spend 90 per cent. of its income.

40 Does part of this 90 per cent. whatever that percentage may be, include the pay of the Branch Managers? Is the pay of a Branch Manager fixed or does it vary with the income so that the Branch Manager may get a certain percentage of the income? Or is it that out of 90 per cent. income leaving the expenditure, the entire balance is the Manager's pay? If the scheme is something by which the Managers are to be paid, a percentage of the income or the entire balance out of 90 per cent. deducting expenses, it will be an attractive scheme as far as the Managers are concerned. What is the position of shareholders who have had to

Exhibits
p 8.
Letter
23-1-43
-continued.

Exhibits
 P 8.
 Letter
 23-1-43
 —continued.

give their buses to these branches? Is each shareholder a sort of sub-manager that he can take 90 per cent. and given ten per cent. to the Branch Manager so that he may forward it to the Central Office. If that is the scheme, the shareholders also may not object to the scheme, provided all shareholders agree to this arrangement. As far as my bus in concerned, your Secretary, Mr. Obeyesekera informed me that I could belong to the Attanagalla Branch with the old Sirimedura Garage. But since then, I find my bus attached to the branch at Peliyagoda, Emjay Garage. May I know how much I am to get per month for subsistence and what number of shares you propose to allot to me in respect of this 10 bus and its goodwill. Please also let me know on what principle or basis your Company will proceed in converting the interests of the bus owners into shares of your Company. Please let me know the principle you have formulated to convert the rights of the present owners to give shares in a manner that will make the distribution of the income equitable. I have no quarrel with your Articles or Memorandum. What matters is your traffic system, your accounting system, and the principles on which you have adopted to convert the interests of the bus owners to shares.

Has your method of converting the interests into shares in any way made some bus owners to get a larger percentage of the total income 20 into their pockets than they used to get before the Company system.

I believe I am entitled to answers to this question as a shareholder of your Company.

Please let me have a reply to this letter at your earliest convenience and oblige.

Yours faithfully,

(Sgd.) L. A. PERERA,
 Haggalla,
 Urapola.

P 15.
 Letter
 26-1-43

P 15.

P 15. Letter.

30

SIRI LANKA OMNIBUS CO., LTD.

Colombo, January 26, 1943.

G. D. E. MALAWANA, Esq.,
 Potuhera.

Dear Sir,

We thank you for your letter dated the 26th instant but regret we are unable to issue you coupons for the balance half of the month as these vehicles now belong to the Company and Individual owners are not allowed to ply for hire as previously.

40

Please make arrangements to deliver the 3 buses to our Peliyagoda Garage before the 31st instant. Exhibits

Yours faithfully,
Sri Lanka Omnibus Company, Ltd.,
(Sgd.) DONALD PEREIRA,
Manager.

P 15.
Letter
26-1-43
—continued.

P 14. Receipt.

P 14.

SRI LANKA OMNIBUS COMPANY, LIMITED.

P 14.
Receipt
1-2-43

10

1-2-1943.

Received from Peliyagoda Branch the sum of Rupees One hundred and Five only on account of Bus income *re* X4779, W1284, Z3695.

(Sgd.) D. J. F. OBEYESEKERA,
Secretary.

Rs. 105.

P 34. Acceptance of Bus.

P 34.

Colombo, 1st February, 1943.

P 34.
Acceptance
of Bus.
1-2-43

From: SRI LANKA OMNIBUS Co., LTD.,
Colombo.

20

We have taken possession of the under noted Omnibuses as per particulars given below.

Yours faithfully,

(Sgd.) DONALD PEREIRA,
Manager.

Bus No.	Make		Assessed Value	
			Rs.	cts.
X7705	Chevrolet Master Model	...	2,750	00
	Route value and goodwill of Vehicle	...	500	00
			<u>3,250</u>	<u>00</u>

30

Rs. Three thousand Two hundred and Fifty only.

(Sgd.) DONALD PEREIRA,
Manager.

Exhibits
P 16.
Acceptance
of Bus.
1-2-43

P 16. Acceptance of Bus.

Colombo, 1st February, 1943.

P 16.

From: SRI LANKA OMNIBUS CO., LTD.

We have taken possession of the under noted Omnibuses as per particulars given below.

(Sgd.) DONALD PEREIRA,
Manager.

				Rs.	cts.
Z3695	Chevrolet	...	...	3,750	00 10
X4779	Chevrolet	...	...	2,500	00
W1284	Dodge	...	...	1,500	00
	Route value and goodwill of the above three buses assessed at Rs. 500 per Vehicle	...	...	1,500	00
				<u>9,250</u>	<u>00</u>

Rupees Nine thousand Two hundred and Fifty only.

(Sgd.) DONALD PEREIRA,
Manager.

P 23.
Acceptance
of Bus.
1-2-43

P 23. Acceptance of Bus.

Colombo, 1st Feby., 1943.

P 23.

From: SRI LANKA OMNIBUS CO., LTD.,
P. O. Box 155, Colombo.

We have taken possession of the under noted Omnibuses as per particulars given below.

Yours faithfully,
(Sgd.) DONALD PEREIRA,
Manager.

Bus No.	Make		Assessed Value	Rs.	cts. 30
Z1290	Ford V8	...	...	3,000	00
X8218	Ford V8	...	...	2,000	00
D 2763	Chevrolet 4 Cyld.	...	...	1,000	00
	Route value and goodwill of Z1290	...	...	1,000	00
	Route value and goodwill of X8218 and D2763 at Rs. 500 each	...	...	1,000	00
				<u>8,000</u>	<u>00</u>

(Rs. Eight thousand only).

Sri Lanka Omnibus Co., Ltd.,
(Sgd.) DONALD PEREIRA, 40
Manager.

P 45. Acceptance of Bus.

Exhibits

P 45.

Colombo, 2nd February, 1943.

P 45.
Acceptance
of Bus.
2-2-43

From: SRI LANKA OMNIBUS Co., LTD.,
Colombo.

We have taken possession of the under noted Omnibuses as per particulars given below.

Yours faithfully,
(Sgd.) DONALD PEREIRA,
Manager.

10

Bus No.	Make	Assessed Value
		Rs. cts.
X6182	Ford 4 Cyld. ...	... 2,000 00
X9595	Bedford ...	... 1,750 00
	Route value and goodwill of the above Vehicles at Rs. 750 each ...	... 1,500 00
		5,250 00

(Rs. Five thousand Two hundred and Fifty only).

(Sgd.) DONALD PEREIRA,
Manager.

20

P 35. Letter.P 35.
Letter
4-2-43**P 35.**

SRI LANKA OMNIBUS Co., LTD.

Colombo, February 4, 1943

MRS. ALICE WIJERATNA,
Galigomuwa,
Ambanpitiya.

Dear Madam,

re **Bus No. X7705**

30 We thank you for your letter of the 3rd instant in connection with the above vehicle and regret to inform you that we are unable to consider any increase in the price already offered you, viz. Rs. 2,750.

It was due to your whole-hearted co-operation with us that we made this high offer as quite frankly the vehicle is not worth more than Rs. 2,000.

Regretting our inability to help you in this matter, we are, dear Madam.

Yours faithfully,
(Sgd.) DONALD PEREIRA,
Manager.

40

Exhibits

P 9.
Letter
11-2-43

P 9.

P 9. Letter.

Colombo, 11th February, 1943.

L. A. PERERA, ESQ.,
Urapola.

Dear Sir,

We have the pleasure to acknowledge receipt of your letter dated 23rd January, 1943.

Yours faithfully,

SRI LANKA OMNIBUS COMPANY, LIMITED. 10

(Sgd.) D. J. F. OBEYESEKERA,
Secretary.

P 10.
Receipt
15-2-43

P 10.

P 10. Receipt.

TRANSPORT & GENERAL FINANCE COMPANY, LIMITED.

Received from Mr. L. A. Perera the sum of Rupees Two hundred and Thirty-eight and 30/100 only : In full settlement.

Cash Rs. 238.30.

With thanks,

TRANSPORT & GENERAL FINANCE Co., LTD. 20

(Sgd.) Illegibly
Cashier.

15th February, 1943.

P 7.
Receipt
23-2-43

P 7.

P 7. Receipt.

SRI LANKA OMNIBUS COMPANY, LIMITED.

41, 21 Victoria Building,
Norris Road,
Colombo, February 23, 1943.

Received from Mr. L. A. Perera of Pahala Biyanwila, Kadawatta Omnibus bearing No. Z817 transferred with its route and goodwill and also route and goodwill of Omnibus No. Z5007 now converted to a lorry,— to the Sri Lanka Omnibus Co., Ltd., for Rupees Five thousand only (Rs. 5,000).

(Sgd.) D. J. F. OBEYESEKERE,
Secretary.

N. B.—Please note that this amount is with the Company to your credit and subject to payment of Rs. 250.75 due to Messrs. General & Transport Co., Ltd., on Hire Purchase Agreement entered into by you with the said Company.

P 48. Receipt.

P 48.

SRI LANKA OMNIBUS COMPANY, LIMITED.

Exhibits

P 48.
Receipt
23-2-43

Colombo, February 23, 1943.

Received from Mr. H. M. J. Bandara of Galapitimada omnibuses Nos. X6182, X9595, transferred with their routes and goodwill to the Sri Lanka Omnibus Co., Ltd., for Rupees Five thousand Two-hundred and fifty only (Rs. 5,250).

(Sgd.) D. J. F. OBEYESEKERE,
Secretary.

10

N. B.—Please note that this amount is with the Company to your credit.

P 60. Minutes of Meeting.

P 60.

P 60.
Minutes of
Meeting
30-3-43

12th Page 16.

Minutes of meeting of Directors held on 30th March, 1943, at Registered Office.

Present: ALWIS, B. J. F., W. K. F., M. J., A. P. DE ZOYSA and OBEYESEKERA.

It was resolved to credit Rs. 1,627.80 to Samarasinghe as amount due to him from money remitted to Coy., in January 43.

Mrs. Alice Wijeratne requests a loan of Rs. 250 from the Company. It was decided that no profits can be determined till the end of the year. It was decided to apply for a licence between Galapitimada and Kegalle. It was resolved to pay Kuruncgala Branch 90% of the income remitted from 16-1-43 to 7-3-43.

(Sgd.) 6 Directors.

P 38. Minutes of Meeting.

P 38.

(Copied from D1. Minute Book)

P 38.
Minutes of
Meeting
30-3-43

Intld. I. A. B.

30

12th Page 16.

Minutes of meeting of Directors held on 30th March, 1943, at Registered Office.

Present: ALWIS, B. J. F., W. K. F., M. J., A. P. DE ZOYSA and OBEYESEKERA.

It was resolved to credit Rs. 1,627.80 to Samarasinghe as amount due to him from money remitted to Coy., in January 43.

Exhibits
P 38.
Minutes of
Meeting
30-3-43
—continued.

Mrs. Alice Wijeratne requests a loan of Rs. 250 from the Company.
It was decided that no profits can be determined till the end of the year.
It was decided to apply for a licence between Galapitimada and Kegalle.
It was resolved to pay Kurunegala Branch 90% of the income remitted
from 16-1-43 to 7-3-43.

(Sgd.) 6 Directors.

P 36.
Letter
3-4-43

P 36. Letter.

P 36.

SRI LANKA OMNIBUS COMPANY, LIMITED.

Colombo, April 3, 1943. 10

MRS. ALICE WIJERATNE,
"Ratnagiri,"
Galigamuwa,
Ambanpitiya, Kegalle.

Dear Madam,

With reference to your letter of the 23rd ultimo we have the pleasure
to advise that no profits can be determined till the end of one working year.

Yours faithfully,
Sri Lanka Omnibus Co., Ltd.

(Sgd.) D. J. F. OBEYESEKERA, 20
Manager.

P 24.
Petition
8-5-43

P 24. Petition.

P 24.

Kadugannawa,
8th May, 1943.

To: THE HON'BLE THE DIRECTOR OF MOTOR TRANSPORT,
Colombo.

Sri Lanka Bus Company.

Sir,

We the undersigned who were plying their buses between Kandy and Kadugannawa and Kadugannawa and Colombo now merged in the above company beg to lay the following grievances before Your Honour.

1. This Company was formed in February this year but up to date we have not been given a cent on any account. We are small bus owners who had to depend on the income of the buses for their daily existence. The Directors state that they are unable to make any payments for an year. This would throw us and our families into very great distress. We know of bus companies where payments are made monthly.

Exhibits
P 24.
Petition
8-5-43
—continued.

2. Though all the buses on the Kandy-Colombo route have been flowted into the company individual owners like M. J. Co., B. J. Co., L. S. Co., have their own tickets, their own staff and in the evenings they are driven into their own garages and not to the garage of the Sri Lanka Bus Company. The names of these companies appear on their buses to indicate the individuality but no common name under the Sri Lanka Bus Company has been adopted yet.

3. We do not understand how we stand to gain by an arrangement where we are not shown any sympathy. There is reason to believe that they are unconcerned about our existence and while they as powerful factors can make their voices prevail and get their individual affairs obtained, we the small bus owners must be exposed to their tender mercy.

4. The situation in which we find ourselves is one of the reasons that was envisaged at the time when the new motor Policy was introduced that there was the likelihood of the small man being left alone.

5. We therefore beg that your honour may be pleased to inquire into this matter and see that monthly payments are made available to us and that our voices do not pass as a cry in the wilderness.

We are, Sir,
Your Obedient Servant,

Name

Address

(Sgd.) R. GOONESEKERA.

- | | | |
|----|----------------------------|----------------------------|
| 30 | 1. W. D. R. GOONESEKERA, | Pilimatalawa, Kadugannawa. |
| | 2. W. A. ARNOLIS APPUHAMY, | Peradeniya Road, Kandy. |
| | 3. ROMANIS APPUHAMY, | Muruthalawa, Peradeniya. |

P 24a. Petition (Same as P 24.)

P 24a. (Same as P 24.) addressed to The Hon'ble Mr. S. W. R. D. Bandaranaike, The Minister of Local Administration, Colombo.

P 24a.
Petition
(same as
P 24)

Exhibits

P 37.
Letter
21-5-43

P 37. Letter.

P 37.

SRI LANKA OMNIBUS COMPANY, LIMITED.

Colombo, May 21, 1943.

MRS. ALICE WIJERATNE,
"Ratnagiri,"
Galigamuwa, Ambanpitiya.

Dear Madam,

We thank you for your letter of the 20th instant but regret to advise that our Directors are unable to consider the payment of any loan to any 10 Shareholder of the Company.

Regretting our inability to serve you in this instance.

We are, Dear Madam,
Yours faithfully,
(Sgd.) DONALD PEREIRA,
Manager.

P 25.
Letter
27-5-43

P 25. Letter.

P 25.

SRI LANKA OMNIBUS COMPANY, LIMITED.

Colombo, May 27, 1943. 20

W. D. R. GOONESEKERE, Esq.,
Pilamatalawa,
Kadugannawa.

Dear Sir,

We are in receipt of your complaint to the Minister for Local Administration which has been forwarded to us for reply.

As we have pointed out before, our Directors have decided that in the best interests of this Company, there should be no payment of monthly dividends and they regret that they are unable to alter this decision in any way.

30

The Directors have also decided to lay aside to Reserve Account at least fifty per cent. of the profits, if any, at the end of the Year. This sum will be utilised to purchase new vehicles immediately they become available. In view of this and as it is obvious from your letters that you are unable to wait until the final accounts are made up, we enclose our cheque for Rs. 8,160 in full settlement of all your accounts with us. Kindly acknowledge receipt in due course.

It is with great reluctance that we decided to close this account, but quite frankly, we are not prepared to alter our decision whereby the

Directors agreed to make this company as financially sound as possible and it may be that no dividend whatever will be paid for about 2 or 3 years. The profits if any, for this period being placed to Reserve Account. Exhibits P 25. Letter 27-5-43 -continued.

Yours faithfully,
(Sgd.) DONALD PEREIRA,
Manager.

P S.—We have allowed you interest at 6% from 1-2-43 to 31-5-43.

P 42. Letter.

10 P 42.

SRI LANKA OMNIBUS COMPANY, LIMITED.

P 42.
Letter
27-5-43

Colombo, May 27, 1943.

W. A. ARNOLIS APPUHAMY, ESQ.,
No. 26, Peradeniya Road,
Kandy.

Dear Sir,

We are in receipt of your complaint to the Minister for Local Administration which has been forwarded to us for reply.

As we have pointed out before, our Directors have decided that in the best interest of this company, there should be no payment of monthly dividends and they regret that they are unable to alter this decision in any way.

The Directors have also decided to lay aside to Reserve Account at least fifty per cent. of the profits, if any, at the end of the year. This sum will be utilised to purchase new vehicles immediately they become available. In view of this and as it is obvious from your letters that you are unable to wait until the final accounts are made up, we enclose our cheque for Rs. 3,570 in full settlement of all your accounts with us. Kindly acknowledge receipt in due course.

It is with great reluctance that we decided to close this account, but quite frankly, we are not prepared to alter our decision whereby the Directors agreed to make this company as financially sound as possible and it may be that no dividends whatever will be paid for about 2 or 3 years. The profits if any, for this period being placed to Reserve Account.

Yours faithfully,
(Sgd.) DONALD PEREIRA,
Manager.

We have allowed you interest at 6% from 1-2-43 to 31-5-43.

40

Intld.....

Exhibits
P 11.
Balance
Sheet

P 11.

P 11. Balance Sheet.

Copy.

SRI LANKA OMNIBUS COMPANY, LIMITED.

TERENCE PERERA & Co.,
Approved Accountants,
Income Tax.

Income and Expenditure Account for the Period
16th January, 1943 to 15th January, 1944.

	Rs.	c.		Rs.	c. 10
To Agencies Fees ...	1,508,938	77	By Gross Takings ...	1,676,647	38
„ Rent ...	635	00	„ Rent ...	50,764	00
„ Insurance ...	6,794	96	„ Bank Int. ...	234	96
„ Postage ...	266	84	„ Sundry Income ...	61	71
„ Telephone ...	250	15			
„ Lights and Fans ...	38	50			
„ Travelling ...	233	35			
„ Legal ...	1,301	90			
„ Salaries ...	14,247	50			
„ Subscription ...	300	00			20
„ Stationery ...	3,549	86			
„ Licence ...	42,133	51			
„ Interest ...	2,580	00			
„ Depreciation ...	124,179	00			
„ Sundries ...	1,367	36			
„ Surplus ...	20,891	35			
	<u>Rs. ...</u>	<u>1,727,708 05</u>		<u>Rs. ...</u>	<u>1,727,708 05</u>
To Income Tax Reserve ...	10,891	35	By Surplus ...	20,891	35
		10,000			30
	<u>Rs. ...</u>	<u>20,891 35</u>		<u>Rs. ...</u>	<u>20,891 35</u>

Balance Sheet as at 15th January, 1944.

				Rs.		c.		Exhibits
		LIABILITIES						P 11.
								Balance
								Sheet
								—continued.
Share Capital	717,210		00		
SUNDRY CREDITORS :								
On open accounts	Rs. 51,520·00					
Commissioner of Income Tax	„ 11,250·00					
				62,770		00		
Loans	52,500		00		
10 Income Tax Reserve	10,891		35		
Income and Expenditure Account Balance	10,000		00		
				Rs. ... 853,371		35		
ASSETS								
Motor Vehicles	Rs. 513,967·00					
Depreciation	„ 124,179·00					
				389,788		00		
Goodwill	256,983		00		
Furniture and Fittings	1,757		28		
20 Incorporation Expenses	8,820		00		
Deposits	3,365		00		
Sundry Debtors	1,885		00		
Income Tax Asst. 1942/43	Rs. 7,500·00					
Income Tax Asst.	„ 11,250·00					
				18,750		00		
CASH :								
Bank of Ceylon	Rs. 158,565·84					
In Hand	„ 13,457·23					
				172,023		07		
				Rs. ... 853,371		35		

We have audited the above Balance Sheet with the books of the Company and have obtained all the information and explanations we have required. We are of the opinion that the Balance Sheet is properly drawn up so that it exhibits a true and correct view of the State of the Company's affairs as at 15th January, 1944, according to the best of our information and the explanation given to us and as shown by the books of the Company.

(Sgd.) **TERENCE PERERA & Co.,**
Certified Public Accountants.

40 Colombo, 22nd May, 1944.

Exhibits
 P 26.
 Letter
 5-6-43

P 26. Letter.

Pilamatalawe,
 Kadugannawa, June 5, 1943.

P 26.
The Manager,
 SRI LANKA BUS CO., LTD.,
 Colombo.

Dear Sir,

With reference to your letter of the 27th May, I have the honour to inform you that I have no desire to withdraw the capital contributed 10 by me. I only made a complaint regarding the manner in which the company is conducted.

You will also see that share certificates have not yet been issued to us though these should have by now been issued.

I am therefore returning the cheque for Rs. 8,160 sent by you. I am entitled to a share to this value and I shall thank you to send my share certificate without delay, as I am not prepared to surrender my shares.

Yours faithfully,
 W. D. R. GUNASEKERA. 20

One enclosure.

P 43.
 Letter
 5-6-43

P 43. Letter.

H 26 Mulgampola,
 Kandy, June 5th, 1943.

The Manager,
 SRI LANKA OMNIBUS CO., LTD.,
 Colombo.

Dear Sir,

With reference to your letter of the 27th May, 1943 which had gone 80 back for want of correct address was sent to me and received by me yesterday. I wish to inform you that it is far from my intention to withdraw the capital contributed by me towards the company. My complaint was inspired by the unsatisfactory and indefinite manner in which the company was conducted.

You will appreciate that share certificates have not yet been issued to me though these should have by now been issued.

I am therefore returning the cheque for Rs. 3,570 sent by you, with your letter. I am entitled to shares to this value and I shall thank you to send my share certificate without delay, as I am not prepared to 40 surrender my shares.

Yours faithfully,
 W. A. ARNOLIS APPUHAMY.

P 27. Letter.

P 27.

SRI LANKA OMNIBUS COMPANY, LIMITED.

Exhibits

P 27.
Letter
9-6-43

Colombo, 9th June, 1943.

W. D. R. GOONESEKERA, Esq.,
Pilamatalawe,
Kadugannawa.

Dear Sir,

We are in receipt of your letter of the 15th instant and note that
10 you have no desire to withdraw your deposit with us.

The matter will be put before the Directors at their next meeting
and we will advise you of their decision in due course.

Yours faithfully,
(Sgd.) DONALD PEREIRA,
Manager.

P 44. Letter.

P 44.

SRI LANKA OMNIBUS COMPANY, LIMITED.

P 44.
Letter
16-6-43

Colombo, 16th June, 1943.

20 W. A. ARNOLIS APPUHAMY, Esq.,
H 26, Mulgampola,
Kandy.

Dear Sir,

We are in receipt of your letter of the 15th instant and note that you
have no desire to withdraw your deposit with us.

The matter will be put before the Directors at their next meeting
and we will advise you of their decision in due course.

Yours faithfully,
(Sgd.) DONALD PEREIRA,
Manager.

30

P 54. Minutes of the Meeting.

P 54.

17th Page 21.

P 54.
Minutes of
Meeting
29-6-43

Minutes of the meeting of Directors of Sri Lanka Omnibus Co. on
29th June, 1943, at Registered Office.

B. J. F., A. P. DE ZOYSA, M. JAYASENA, D. J. F. OBEYESEKERA
present.

Exhibits
P 54.
Minutes of
Meeting
29-6-43
—continued.

2. It was decided to reply Mr. W. A. Arnolis Appuhamy in respect to his letter of 5th June, 1943 that the Directors refused to grant his shares and to inform Mr. W. A. Arnolis Appuhamy that the assessed value of his bus is being paid to him.

Re—Mr. Ismail and Mr. Polambegoda bus, it was decided to refer the matter to the managing Director C. Branch.

(Sgd.) 4.

18th Page 22.

Statement of account circulated and accepted by Directors.

(Sgd.) 4. 10

P 61.
Letter
12-7-43

P 61. Letter.

12-7-43.

Gentleman,

As there will be a meeting to go through the accounts of June, 1943 of this Branch and divide the profits and losses on the 15th instant, at 11 a.m. your presence is essential.

(Sgd.) K. M. PERERA.

P 55.
Minutes of
Meeting
27-7-43

P 55. Minutes of Meeting.

20

Minutes of meeting of Directors held on 27th July, 1943, at Registered Office.

DR. A. P. DE ZOYSA, W. K. FERNANDO, M. J., OBEYESEKERA and FRANCIS ALWIS present—Alwis came after meeting commenced.

It was decided to pay compensation for the Omnibuses which were sold to the Company, and for which shares have not been allotted to the following:—L. A. Perera, P. D. Pabilis Appuhamy, K. Kirinelis Perera, W. D. R. Goonesekera, G. D. E. Malawana, M. M. Matheshamy, R. A. Sirisena, W. A. Arnolis Appuhamy, H. M. J. Bandara and M. J. G. Nanayakkara.

30

Re—Supervies for D branch—3 are

(Sgd.) A. P. DE ZOYSA,
W. K. FERNANDO,
ALWIS,
M. J.

P 62. Letter.

Exhibits

P 62.

14-8-43.

P 62.
Letter
14-8-43

Gentleman,

As there will be a meeting on the 20th instant, at 10 a.m. to divide the profits and losses of this Branch for the month of July, 1943, your presence is essential.

10

Sri Lanka Omnibus Co., Ltd.,
(Sgd.) K. M. PERERA,
Manager,
Branch "G" Kurunegala.

P 28. Letter.**P 28.**

Pilamatalawe,

Kadugannawa, August 21st, 1943.

P 28.
Letter
21-8-43

THE SRI LANKA OMNIBUS CO., LTD.,
Victoria Building,
Colombo.

Dear Sirs,

20 Adverting to your letter of the 9th June, 1943, I regret that I have not had response from you as to the decision of your committee or your share certificates. The silence is very distressing and not sympathetic and I shall be thankful if you will be pleased to send me your decision and the certificates early.

W. D. R. GUNASEKERA.

P 51. Minutes of Meeting.**P 51.**

20th Page 24.

P 51.
Minutes of
Meeting
24-8-43

30 Minutes of the meeting of Directors of Sri Lanka Omnibus Co. held on 24th August, 1943, at Registered Office.

DR. A. P. DE ZOYSA, B. J., M. J., W. K. F., D. J. F. OBEYESEKERA present.

It was decided to retransfer the two omnibuses No. 3799 and Q734 transferred to Coy. as the coy. was not prepared to purchase them at the value placed on them by Mr. Fernando.

It was resolved to allot shares to those who have surrendered their vehicles to the company.

Exhibits
P. 51
Minutes of
Meeting
24-8-43
—continued.

It was decided that all payments to Office be made by Cheque or that the Branch Managers be directed to pay in the money to the Bank to the credit of the Company, and receipt forwarded to Company.

(Sgd.) A. P. D.,
W. K. F.,
ALWIS,
M. J.,
B. J.

P 29.
Letter
7-9-43

P 29. Letter.

P 29.

SRI LANKA OMNIBUS COMPANY, LIMITED.

10

Colombo, 7th September, 1943.

W. D. R. GUNASEKERA, ESQ.,
Pilamatalawe,
Kadugannawa.

Dear Sir,

We have to acknowledge receipt of your letter of August 21st, 1943. A reply will be sent to you as early as possible.

Yours faithfully,
(Sgd.) DONALD PEREIRA, 20
Manager.

P 30.
Letter
15-9-43

P 30. Letter.

P 30.

Pilamatalawe,
Kadugannawa, 15th September, 1943.

The Manager,
SRI LANKA OMNIBUS Co., LTD.,
Colombo.

Dear Sir,

I have to invite your attention to your letter to me of the 7th instant, 30 and to request you to please send me without delay the Share Certificates for the shares due to me in exchange for the value of the Motor Buses and the route value thereof taken over by the Company from me.

Please let me know whether the shares have been allotted, and if so when? The delay in allotting the shares and issuing the certificates causes much inconvenience to me.

Please also send me by return post a copy of the Memorandum and Articles of Association of your Company for my file.

Yours faithfully,
W. D. R. GUNASEKERA. 40

P 31. Letter.

P 31.

SRI LANKA OMNIBUS COMPANY, LIMITED.

Exhibits

P 31.
Letter
20-9-43

Colombo, 20th Sept., 1943.

W. D. R. GUNASEKERA, Esq.,
Pilamatalawe,
Kadugannawa.

Dear Sir,

We thank you for your letter of the 15th instant and have to advise you that the question of Share Certificates is being gone into at present and you will be notified of our decision in due course.

For your information we would like to mention that no Share Certificates have been issued to anyone as yet.

Yours faithfully,
Sri Lanka Omnibus Co., Ltd.
(Sgd.) DONALD PEREIRA,
Manager.

P 57. Minutes of Meeting.

P 57.

P 57.
Minutes of
Meeting
1-10-43

2021st Page 25.

Meeting of Directors on 1st October, 1943, at Registered Office.

Present: A. P. DE ZOYSA, B. J. FERNANDO, W. K. FERNANDO,
ALWIS, D. J. F. OBEYESEKERA.

Statement of account passed and adopted.

Re assessment of Income Tax, it was decided to refer it to Directors and ask them whether Company should pay the assessment.

It was agreed that shares be allotted to the following as from 1st October, 1943—N. N. Matheshamy, W. D. Henry, D. N. Wickremasinghe, (W. A. Arnolis Appuhamy, written here and cut off) S. A. Samarasinghe, R. G. Romel Dias, Mrs. D. A. Ranmenika, M. N. Appuhamy, B. A. John Singho, L. A. Pabilis Appuhamy, K. M. Perera, Mrs. T. P. S. Natchi, A. G. Martin, Dias, P. A. Mendis Appuhamy.

It was agreed to forward the Controller of Labour all way bills of the branches.

It was agreed to circulate the draft agreement for approval.

(Sgd.) A. P. DE Z.,
B. J. F.,
ALWIS,
W. K. F.,
D. J. F. OB.

Exhibits
 P 32.
 Letter
 18-10-43

P 32. Letter.

2, Colombo Street,
 Kandy, 13th October, 1943.

SRI LANKA OMNIBUS Co., LTD.,
 Norris Road, Colombo.

Dear Sir,

We are acting for Mr. W. D. R. Gunasekera a shareholder in your Company We shall thank you to kindly send us a copy of your prospectus and Articles of Association. Our client states that that no copy of the 10 prospectus and Articles of Association have sent to him.

Yours faithfully,
 (Sgd.) A. S. KARUNARATNE.

P 47.
 Letter
 8-11-43

P 47. Letter.

3rd November, 1943.

DR. A. P. DE ZOYSA,
 Director—Sri Lanka Bus Co., Ltd.,
 Colombo.

Dear Sir,

I received, under registered cover, a few days ago, a receipt dated 23-2-43, stating that you have received my two buses from me for Rs. 5,250. It is signed by the Secretary of the Company, Mr. Obeyesekera. Below the signature there is a statement that this amount is with the Company to my credit. I cannot possibly understand the meaning of this document. Will you be good enough to let me know what this means. I have not wanted, at any time, to sell my buses to your Company. I have never asked for any money from you. I cannot understand how a sale has happened, of my buses, without my ever having wanted to sell them. I am writing to you because I thought I 30 could have faith in you as a good and educated man. I like to know whether you are aware of these happenings, or these things happened without your knowledge.

On the several occasions I met you, when this Company was being promoted, you are aware that there was never a question of a sale of my buses. If you are not aware of these things please investigate the matter and let me know the result at your earliest convenience. I would prefer a written reply to a personal interview. As a matter of business precaution, I prefer the writing. This position has been reached as a result of my not having taken such a business precaution in the earlier stages. 40

Another thing that puzzles me is why a receipt of last February waited over six months to get posted. This receipt has a stamp with a

rubber seal "undated" and "uninitialled." Looking into my file I found that a receipt given that you took possession of the vehicles on the 2nd February, was found. That was given promptly to receive delivery of the buses. There has been no correspondence between me and the Company since then and the only paper the company sent me, has delayed quite a lot. I am in fear of loss, and my only hope is your assistance. Please be good enough to reply immediately.

Yours faithfully,

P 50. Minutes of Meeting.

10 P 50.

22nd Page 26.

Minutes of the meeting of Directors of Sri Lanka Co., held on 9th November, 1943, at Registered Office, Victoria Building.

DR. A. P. DE ZOYSA, B. J. FERNANDO, W. K. F. and OBEYESEKERA Present.

Statement of account for August and September, 1943, circulated and adopted.

Shares were allotted as under :

	N. M. Marthelishamy of Galigomuwa	...	36	shares
20	W. D. Hendry of Galigomuwa	...	36	"
	D. M. Weerasinghe of Kelaniya	...	44	"
	S. A. Samarasinghe of Kegalle	...	277	"
	Mrs. D. A. Ranmenika of Alawwa	...	27	"
	M. M. Appuhamy of Potuhera	...	22	"
	B. A. John Singho of Kurunegala	...	27	"
	L. A. Pabilis Appuhamy of Potuhera	...	22	"
	K. M. Perera of Potuhera	...	61	"
	Mrs. Natchiya of Potuhera	...	23	"
	H. G. Martin Dias of Giriulla	...	25	"
30	P. A. Mendis Appuhamy of Potuhera	...	22	"
	H. G. Romel Dias	...	88	"

The following payments from the money held to the credit of them who had handed over their vehicles were approved :—

			Rs.	c.
	L. A. Perera	...	5,000	00
	Interest at 10% up to 15-11-43	...	416	66
			<hr/>	
			5,416	66
	P. D. Pabilis Appuhamy	...	5,000	00
	Interest	...	416	66
			<hr/>	
			5,416	66
			<hr/>	

40

P 50.
Minutes of
Meeting
9-11-43

Exhibits
P 47.
Letter
3-11-43
—continued.

Exhibits
P 50.
Minutes of
Meeting
9-11-48
—continued.

K. M. Kirinelis Perera	...	...	5,000	00
Interest	...	...	416	66
			<hr/>	
			5,416	66
W. D. R. Goonesekera	...	...	8,000	00
Interest	...	...	666	66
			<hr/>	
			8,666	66
G. D. E. Malawana ...	...	...	9,250	00
Interest	...	...	270	83
			<hr/>	
			9,520	83
Mrs. Alice Wijeratne	...	...	3,250	00 ¹⁰
Interest	...	...	270	83
			<hr/>	
			3,520	83
R. A. Sirisena ...	...	...	1,500	00
Interest	...	...	125	00
			<hr/>	
			1,625	00
H. M. J. Bandara ...	...	...	5,250	00
Interest	...	...	487	50
			<hr/>	
			5,687	50
G. J. Nanayakkara ...	...	...	1,750	00
Interest	...	...	145	83 ²⁰
			<hr/>	
			1,895	83
R. D. Siyaneris ...	...	...	1,500	00
Interest	...	...	125	00
			<hr/>	
			1,625	00

Last meeting, Secretary was allowed permission to work as Secretary to Colombo, Ratnapura Bus Co., Ltd.

DR. A. P. DE Z.
B. J. F.,
W. K. F.,
D. F. J.

P 33. Letter.

P 33.

SRI LANKA OMNIBUS COMPANY, LIMITED.

Exhibits

P 33.
Letter
12-11-43

Colombo, November 12, 1943.

W. D. R. GUNASEKERA, Esq.,
Pilamatalawe,
Kadugannawa.

Dear Sir,

As intimated to you previously, there is a sum of Rupees 8,000 lying
10 to your credit in the books of the Company.

We have to date failed to hear from you as to how we are to dispose
of the amount lying to your credit, and shall be glad if you will call at
this Office on Wednesday the 17th instant at 12 noon for an interview.

Yours faithfully,
Sri Lanka Omnibus Company, Limited.

Secretary.

P 46. Letter.

P 46.

SRI LANKA OMNIBUS COMPANY, LIMITED.

P 46.
Letter
12-11-43

20

Colombo.

November 12, 1943.

H. M. J. BANDARA, Esq.,
Galapitimada,
Warakapola.

Dear Sir,

As intimated to you previously, there is a sum of Rupees 5,250 lying
to your credit in the books of the Company.

We have to date failed to hear from you as to how we are to dispose
the amount lying to your credit, and we shall be glad if you will please
30 arrange to call at this Office on Wednesday, the 17th instant, at 12 noon
for an interview.

Yours faithfully,
(Sgd.) DONALD PEREIRA,
Secretary.

Exhibits

P 39.
Letter
12-11-48

P 39. Letter.

SRI LANKA OMNIBUS COMPANY, LIMITED.

Colombo, November 12, 1943.

MRS. ALICE WIJERATNE,
Ambanpitiya, Galigomuwa.

Dear Madam,

As intimated to you previously, there is a sum of Rs. 3,250 lying to your credit in the books of the Company.

We have to date failed to hear from you as to how we are to dispose the amount lying to your credit, and we shall be glad if you will arrange to call at this office on Wednesday, the 17th instant, at 12 noon for an interview.

Yours faithfully,
Sri Lanka Omnibus Company, Ltd.
(Sgd.) D. J. F. OBEYESEKERA,
Secretary.

P 17.
Telegram
16-11-43

P 17. Telegram.

16th November, 1943.

TELEGRAPHS.

20

MALAWANA MUDALALE,
Potuhera.

Meet Baudha Mandiraya tomorrow morning 11.

KIRINELIS PERERA,
Sakuntala Bus Owner.

P 59.
Minutes of
Meeting
17-11-48

P 59. Minutes of Meeting.

P 59.
23rd Page 28.

Minutes of the meeting of Directors of Sri Lanka Omnibus Co., held on 17th November, 1943, at Registered. Office, Victoria Building. 30

Present: DR. A. P. DE ZOYSA, W. K. FERNANDO, ALWIS, M. J. and
SECRETARY, OBEYESEKERA.

Following owners who were noticed to be present—were present, L. A. Perera, R. A. Siyaneris, M. G. S. Nanayakkara, H. M. J. Bandara, G. D. E. Malawana, R. D. Siyaneris. The Directors explained the working of the Company. G. D. E. Malawana refused to join the company as a shareholder, others agreed to notify their consent in writing later on.

It was agreed to join the omnibus company and to pay a monthly fee of Rs. 100.

(Sgd.) A. P. DE ZOYSA 40
M. J.
W. K. F.
D. J. F.

P 18. Letter.

P 18.

SRI LANKA OMNIBUS COMPANY, LIMITED.

Exhibits

P 18.
Letter
18-11-43

Colombo, November 18, 1943.

REGISTERED.

G. D. E. MALAWANA, Esq.,
Potuhera.

Per Registered Post.

Dear Sir,

10 With reference to your interview with the Directors yesterday, we have pleasure to enclose herewith cheque No. B75258 for the sum of Rupees Ten thousand and Ninety-seven and cents ninety-one (Rs. 10,097.91).

This sum represents Rs. 9,250 lying to your credit in the books of the Company and interest at the rate of 10% up to the 30th of November, 1943, which is Rs. 847.91.

Please acknowledge receipt.

Yours faithfully,
Sri Lanka Omnibus Co., Ltd.
(Sgd.) D. J. F. OBEYESEKERA,
Secretary.

20

Colombo, 18th Nov., 1943.

BANK OF CEYLON,
Colombo.

Pay G. D. E. Malawana, Esq. or order Rupees Ten thousand and Ninety-seven and cents Ninety-one only.

Sri Lanka Omnibus Co., Ltd.
A. P. DE ZOYSA,
M. JAYASENA,
Directors.

Rs. 10,097.91.

80

P 40.

P 40. Letter.

Colombo, 19th November, 1943.

P 40.
Letter
19-11-43*The Secretary,*MESSRS. THE SRI LANKA OMNIBUS CO., LTD.,
Colombo.

Dear Sir,

Your letter dated 12-11-43 asking for an interview and stating that Rs. 3,250 is lying to my credit. At the interview your Directors Mr. M. Jayasena and Dr. A. P. de Zoysa tell me a different story from the letter.
40 That you will take several years to pay any dividends, and suggest that

Exhibits
P 40.
Letter
19-11-43
—continued.

we take the value of the buses as indicated in your letter of 12-11-43; that we confirm our decision in writing whether we are willing to remain shareholders and with risks of no dividends for a long while, or whether we choose to take the sum offered in the letter and go out altogether.

At the interview we seem to be shareholders, the only trouble being our having to wait for dividends. In the letter it is something else.

Please write and inform me whether I am a shareholder or not. I always believed I was one and still believe so. I like to know my position according to your view before I can comply with your request at the interview. Please reply without delay.

Yours faithfully,

10

P 19.
Letter
20-11-43

P 19.

P 19. Letter.

G. D. E. MALAWANA.

Potuhera, 20-11-43.

Copy
Registered.

D. J. F. OBEYESEKERA,
Secretary,
Sri Lanka Bus Co.

20

Gentleman,

Just received under registered cover the Cheque (Rs. 10,097.91) dated 18th November, 1943, along with it there was a letter. As I cannot understand the meaning of the cheque or of the letter I have returned the cheque leaf herewith. Accept the same and send a reply. How much more money should be paid for the 500 shares promised to be given to me? I inform again that I am prepared to pay at any time. Although promise was made to send the rules of the Company I have not received them yet. Why was Bus A989 not removed yet? No tyres were sent although promise was made to send tyres for it. From these things it would appear that (Gentlemen) you are not able to carry on the company honestly. If that is so entrust it to us immediately. We will take charge on security and carry it on honestly.

P. 20
Letter
22-23-12-43

P 20.

P 20. Letter.

Colombo, December 22/23, 1943.

G. D. E. MALAWANA, ESQ.,
Potuhera.

Dear Sir,

With reference to your registered letter bearing Potuhera Registration No. 364, I have been directed by the Board of Directors to inform you

that for the money lying to your credit in the books of the Company no interest will be paid after this date and that you may make a call for your money after giving notice.

Yours faithfully,

D. J. F. OBEYSEKERA,
Secretary.

Exhibits
P 20.
Letter
22-23-12-43
- continued.

P 49. Receipt.

P 49.	Rs.	c.	P 49. Receipt
10 Received from Mr. B. D. Pabilis Appuhamy Bus No. Z5517 together with the goodwill ...	3,250	00	
The goodwill of buses Z-5818 and Z-5517 ...	1,750	00	
Total Rs. ...	5,000	00	

Sri Lanka Omnibus Co., Ltd.

(Sgd.) DONALD PEREIRA,
Manager.

P 21. Letter.

P 21.

Kuruncgala, 5th Jany., 1944.

20 DR. A. P. DE ZOYSA,
Director, Sri Lanka Bus Co., Ltd.,
Colombo.

P 21.
Letter
5-1-44

Dear Sir,

As I was keen to return your cheque without delay I did not wait to include many things I desired to say.

Not being in the best of health I postponed attending to this for a while when I received your letter dated 22-12-43 in spite of much inconvenience, I thought I had better reply to all this.

30 Why have you rushed a cheque to me when I told you very clearly on 17-11-43 that I will have only shares and nothing else. Although you asked us to give up our shares because of the gloomy picture you painted of the Sri Lanka Company. I told you very definitely and clearly that it was not enough to promise me shares in order to induce me to transfer the buses to you, but that you should see that promise kept. Mr. Jayasena himself promised me shares, and induced me to give over my buses. In these circumstance what is the meaning of sending this cheque to me and writing further that no interest will be paid. I never had a need to sell my buses. Why do you treat me as a shareholder when I come there and in writing as a man who has sold buses ?

Exhibits
 P 21.
 Letter
 5-1-44
 —continued.

Please let me know what all this is about. Why don't you issue me my shares and make an end to this nuisance.

I can assure you that your speech on the 17th November left me quite unconvinced. You say that you cannot pay us dividends for the duration of the war. Aren't bus services now making more money? Isn't Mr. Jayasena buying land more than ever before? Why do you say that 90% must be sent for the branch? Must a branch spend 90% somehow? All other bus Companies seem to be making money except yours. Can this be? Why did you say that even after the war you cannot say when a dividend can be declared? You reserve all the bad 10 luck for Mr. Jayasena and want to send us away and ask us to give up our shares because there is no money in it.

You said that the bus business is the biggest in the hands of the Ceylonese and must be saved from the foreigners by laying up reserves. If there is nothing left out of the 90% and profits can come only from the 10% this sounds like madness or worse.

Please be good enough to have my shares allotted without delay and inform me to that effect.

Yours faithfully,

(Sgd.) G. D. E. MALAWANA. 20

P 22.
 Copy of
 Letter
 17-1-45

P 22. Copy of Letter.

P 22.

Copy of our letter dated January 17, 1944 called for by you in your letter of the 28th June, 1945.

January 17, 1945.

G. D. E. MALAWANA, ESQ.,
 Potuhera.

Dear Sir,

With reference to your letter of the 5th January, 1944, your attention is drawn to letters of November 18, 1943 and December 22, 1943, sent to you from the Sri Lanka Omnibus Co., Ltd.

Yours faithfully,

Sri Lanka Omnibus Company, Limited.

(Sgd.) A. P. DE ZOYSA,
 Chairman.

D 2. Memorandum of Association.

Exhibits

D 2.D 2.
Memo-
randum of
Association**MEMORANDUM OF ASSOCIATION OF "SRI LANKA OMNIBUS COMPANY LTD."**

1. The name of the Company is Sri Lanka Omnibus Company, Limited.

2. The Registered Office of the Company will be situated in the District of Colombo.

3. The objects for which the Company is established are :

- 10 (a) To transport passengers and goods between such places as the Company from time to time may determine.
- (b) To amalgamate with any other similar company or establish or buy up and carry on the work of any other similar company.
- (c) To establish branches of the Company in such places as the Company may determine.
- (d) To delegate the authority to carry on the business of branches of the Company on a Commission or any other basis as determined by the Company.
- (e) To act as agents, managers and or secretaries of any Company incorporated in Ceylon or abroad.
- 20 (f) To promote and carry on the business of any company connected with or incidental to Motor and/or Transport industry.
- (g) To acquire omnibuses, property (movable or immovable) in the name of the Company for any one or more of the purposes herein mentioned for valuable consideration or to let, lease or hire any property, garages, repair stations of the Company as and when necessary.
- 30 (h) To import motor chassis, motor cars, motor cycles, push-cycles, tyres, petrol motor and other machinery spare parts and such other articles necessary or connected with or incidental to Motor and/or transport industry.
- (i) To construct garages, workshops and other buildings.
- (j) To build or repair omnibuses, lorries, cars and other motor-vehicles.
- (k) To appoint person or persons as agents of the Company for the efficient control and maintenance of the branch garages and services which may from time to time be established for the

efficient maintenance of transport services. The agent can in no way enter into mortgage bond or promissory note or incur any debts on behalf of the Company.

- (l) To invest the reserve monies of the said company in securities indicated as suitable investments for trust monies or in any other securities whatsoever as may be approved of by the Company.
 - (m) To borrow on the security of all or any of the assets of the Company by way of mortgage of hypothecation thereof any sums that may become necessary as may be deemed expedient 10 by the Company for the purpose of carrying on or furthering the objects of the Company.
 - (n) To sell hypothecate dispose of or otherwise alienate omnibuses garages, repair stations or any of the properties or any of the assets of the Company and to let, lease or hire any property of the Company.
 - (o) To make advances on personal or other securities or to promote finance or assist in the promotion or financing of any company or undertaking either independent or otherwise, calculated directly or indirectly to benefit the business of the Company 20 and to take or otherwise, acquire and hold shares stocks, debenture bonds or obligations of any such company, to receive any money on loan or deposit on such terms as may be agreed with lenders.
 - (p) To support, establish or aid in the establishment or support of a fund or funds for the benefit of the employees of the Company or super annuation funds or make payment or towards insurance on the lives of such persons and to grant monies on pension to them or to their widows, children or other dependants.
 - (q) To grant scholarships and also rewards for inventions. 30
 - (r) To draw, make, accept bills of lading, warrants, bills of exchange, cheques promissory notes and other transferable or negotiable instruments for the purposes of the Company.
 - (s) To generally do all things necessary to implement and carry out any of the objects above mentioned.
4. The Liability of Members is Limited.
5. The share capital of the Company is Rs. 1,000,000 divided into 10,000 shares of Rs. 100 each.

We the several persons whose names and addresses are subscribed are desirous of being formed into a Company in pursuance of this Memorandum 40 of Association and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names.

			Exhibits
Name Description & Address	Signature	Number Shares taken by each subscriber	D 2. Memo- randum of Association ---continued.
1. M. JAYASENA, Proprietor, M. J. Bus Service, Kelaniya.			
2. MUHAM. B. J. FERNANDO, Proprietor, B. J. Bus Service, Borella.			
10 3. W. K. FERNANDO, Partner, Little Service Bus Co., Mawanella.			
4. P. DON FRANCIS ALWIS, Partner, Little Service Bus Co., Mawanella.			

Witness to the above signatures.

Dated this _____ day of _____ 1942.

D 3. Statement of Buses taken over.	Buses taken over.	D 3. Statement of Buses taken over
20 D 3.		
G. D. E. Malawana	{ Z 3695 W 1284 X 4779	Cancelled as unroadworthy on 4-8-1944 Cancelled as unroadworthy on 25-1-1944
K. K. Kirinelis Perera	{ X 5266 H. 1040	Cancelled as unroadworthy on 7-5-1945.
30 W. A. Arnolis Appuhamy	{ D 3181 D 2848	Cancelled as unroadworthy on 22-11-1945.
H. M. J. Bandara	{ X 6182 X 9595	Cancelled as unroadworthy on 9-7-1945.
R. A. Sirisena	...W 928	Unroadworthy—written for cancellation on 6-7-1945.

Exhibits	Mrs. Alice Wijeratne	...X 7705	Under notice of non-user.
D 3. Statement of Buses taken over —continued.	W. D. R. Gunasekera	{ Z 1290	Cancelled as unroadworthy on 6-7-1945.
		{ X 8218	Cancelled as unroadworthy on 9-7-1945.
		{ D 2763	Cancelled as unroadworthy on 28-3-1946.
	R. D. Siyaneris	...X 4837	
	L. A. Perera	...Z 817	
	P. D. Pabilis Appuhamy	...Z 5517	

No.....

Supreme Court of Ceylon
No. 376 (Final) of 1947

District Court, Colombo
No. 15925

*In the Privy Council on an Appeal from
the Supreme Court of Ceylon*

BETWEEN

L. A. PERERA.....*Plaintiff-Respondent*

AND

THE SRI LANKA OMNIBUS COMPANY
LIMITED, of Norris Road, Colombo...*Defendant-Appellant.*

RECORD
OF PROCEEDINGS
