No. 37 1950

Supreme Court of Ceylon
No. 880 (Final) of 1947

District Court, Colombo
No. 15929

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

BETWEEN

W. ARNOLIS APPUHAMY of Kandy..... *Plaintiff-Respondent*

AND

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

# RECORD OF PROCEEDINGS

# INDEX

31369

No.....

Supreme Court of Ceylon
No. 380 (Final) of 1947

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

BETWEEN

W. ARNOLIS APPUHAMY of Kandy.....*Plaintiff-Respondent*

AND

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

# RECORD OF PROCEEDINGS

## No. 1



## Journal Entries

IN THE DISTRICT COURT OF COLOMBO

No. 15929.

W. ARNOLIS APPUHAMY.....*Plaintiff*

Class V. Amount Rs. 26,500.
Nature : Money *vs.*
Procedure : Regular.

THE SRI LANKA OMNIBUS COMPANY LIMITED.....*Defendant.*

JOURNAL

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 paras 2 and 3 in writing. If so plead same and attach to plaint and move in a week.

Intld. R. F. D.

3-1-45. Proctor sees me. Time extended to 22-1.

Intld. R. F. D.,
*D. J.*

12-1-45. 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.

Intld. R. F. D.,
*D. J.*

29-1-45. Summons issued to defendant to W. P.

Intld.....

23-2-45. Summons served on defendant.
Proxy filed. Answer for 9-3.

Intld. R. F. D.

9-3-45. Def. Rs. 9. } for 23-3.
Answer. }

Intld. R. F. D.

Eodei. Deficiency Rs. 9 tendered.

No. 1 Journal Entries 21-12-44 to 8-9-47 —*continued.*

23-3-45. Answer filed.

Issue D. O. for 3570

Intld. R. F. D.

Trial 6-7.

Intld. R. F. D.,
*A. D. J.* 23-5.

26-3-45. Deposit note No. 64686 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 Proctor for defendant moves to call the case on 27-4-45 to fix another trial date.

Call 27-4. Intld. S. C. S.

27-4-45. Case called.

Trial refixed for 31-8. Intld. S. C. S.

12-5-45. K. R. S/5 No. 88800 dated 27-3-45 for Rs. 3,570 filed.

Intld.....

4-8-45. Proctor for plaintiff moves that the Court be pleased in terms of section 102 of the C. P. C. 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 on this case.

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

Call on 24-8-45.

Intld. V. E. R.,
*D. J.*

24-8-45. Mr. I. A. B. Ihalagama for plaintiff.

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

Case called.

20-8-45. Proctor for plaintiff files plaintiffs' list of witnesses and documents with notice to Proctor for defendant. File.

Intld. W. S.,
*D. J.*

21-8-45. Summons issued on five witnesses by plaintiff W. P. and Kandy.

Intld.....

24-8-45 Mr. I. A. B. Ihalagama for plaintiff.
Mr. D. F. J. Perera for defendant.
Case called.
*Vide* order in 15925. Apl. will be filed today.

Intld. W. S.,
*D. J.*

27-8-45. Proctor for defendant files affidavit of the Secretary of Sri Lanka Omnibus Co., Ltd., as ordered by Court and moves that the same be accepted.
Copy posted to plaintiff's Proctors
File.

Intld. W. S.,
*D. J.*

28-8-45. Proctor for plaintiffs files plaintiff's addl. list of witnesses and moves for summons on them with notice to the Proctor for plaintiff. File.

Intld. W. S.,
*D. J.*

28-8-45. Proctor for defendants files defendant's list of witnesses and moves for summons on them with notice to the Proctor for plaintiff.
Re 9 obtain certified copies—others allowed.

Intld. W. S.,
*D. J.*

31-8-45. Case called.
Mr. I. A. B. Ihalagama for plaintiff.
Mr. D. F. J. Perera for defendant.
*Vide* proceedings in 15925.
Call case 21-9.

Intld. W. S.,
*A. D. J.*

21-9-45. Mr. I. A. B. Ihalagama for plaintiff.
Mr. D. F. J. Perera for defendant.
Case called.
Amended answer filed. Trial 14-12.

Intld. S. C. S.

19-10-45. Proctor for plaintiff moves for an order under section 104 C. P. C. for notice on the defendant to produce documents referred to in his affidavit of 24-8-45 for the inspection of the Proctor for plaintiff and to permit him to take copies thereof.
Issue notice for 25-10.

Intld. S. C. S.

No. 1 Journal Entries 21-12-44 to 3-9-47 —*continued.*

26-10-45. Notice not issued. Issue now for 9-4.

Intld. W. S.,
*D. J.*

26-10-45. Notice issued on defendant—W. P.

Intld.....

9-11-45. Mr. I. A. B. Ihalagama for plaintiff.
Notice to produe documents served on the Manager of the Defendant Co. Complied with.

Intld. W. S.,
*D. J.*

24-11-45. Proctor for plaintiff files additional list of witnesses and documents with notice to Proctor for defendant.
*Re* witness No. 1 obtain certified copies subject to this file.

Intld. C. N.

27-11-45. Proctor for plaintiff files additional list of witnesses and documents with notice to Proctor for defendant. File.

Intld. C. N.,
*D. J.*

14-12-45. Trial. Mr. I. A. B. Ihalagama for plaintiff.
Mr. D. F. J. Perera for defendant.
Case cannot proceed today. Judicial conference in progress.
Refix for 12th and 15th April.

Intld. S. C. S.,
*D. J.*

1-2-46. Mr. I. A. B. Ihalagama for plaintiff.
Mr. D. F. J. Perera for defendant.
Case called to refix date of trial.
Trial refixed for 24-6, 25-6 and 1-7.

Intld. S. C. S.,
*A. D. J.*

7-6-46. Proctor for plaintiff files plaintiffs' additional list of witnesses.
Proctor for defendant objects. File.

Intld. W. S.,
*D. J.*

24-6-46. Trial. Mr. I. A. B. Ihalagama for plaintiff.
Mr. D. F. J. Perera for defendant.
Trial postponed 25-6.

Intld. W. S.,
*D. J.*

25-6-46. Trial. S/o 1-7.

Intld. W. S.,
*D. J.*

1-7-46. Trial. *Vide* proceedings in 15925/M. C. A. V.

Intld. W. S.,
*D. J.*

3-7-46. Proctor for plaintiff files list of documents produced in evidence at the trial by the plaintiff in Case No. 15925/M. File.

Intld. W. S.,
*D. J.*

19-8-46. Judgment delivered in open Court on the evidence recorded in D. C. 15925 and for the reasons given in that judgment I 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. 3,500 from 1-2-43 to date of allotment of shares. Plaintiff will be entitled to the costs of the action.

Intld. W. S.,
*D. J.*

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. 36 for S. C. Decree and stamps Rs. 18 for certificate in appeal.

1. Accept.
2. Stamps affixed to the blank forms and cancelled.

Intld. W. S.,
*D. J.*

2-9-46. Petition of appeal of 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.

Intld. W. S.,
*D. J.*

2-9-46. Proctor for defendant-appellant tenders application for type-written copies and moves for a voucher for Rs. 25.

Issue.

Intld. W. S.,
*D. J.*

3-9-46. Notice issued.

Intld. W. S.

No. 1 Journal Entries 21-12-44 to 3-9-47 —*continued.*

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

Intld. W. S.,
*D. J.*

6-9-46. Vouchers for Rs. 250 and Rs. 25 issued.

6-9-46. Proctor for appellant files bond together with notice of appeal.

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

Intld. W. S., 10
*D. J.*

Notice of appeal issued.

6-9-46. K/R. 88215 of 6-9-46 for Rs. 250 filed.
K/R. 88220 of 6-9-46 for Rs. 25 filed.

27-9-46. Proctor for respondent tenders application for typewritten copies and moves for a voucher for Rs. 25. Issue.

Intld. W. S.,
*D. J.*

1-10-46. Voucher for Rs. 25 issued.

K/R. 18918 of 4-10-46 for Rs. 25 filed. 20

11-10-46. Notice of appeal served on Proctor for plaintiff-respondent.
Forward record to S. C.

Intld. W. S.,
*D. J.*

3-9-47. Record sent to S. C. with two briefs for the Judges.

Intld.....

## No. 2

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

## Plaint of the Plaintiff

IN THE DISTRICT COURT OF COLOMBO

W. ARNOLIS APPUHAMY of Kandy.....*Plaintiff*

No. 15929. *vs.*

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

This 20th day of December, 1944.

The plaint of the plaintiff abovenamed appearing by I. A. B. Ihalagama, 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 re-organised 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 the said situation. Prior to the said date the plaintiff was the owner of the motor buses bearing the distinctive Nos. D 2848 and D 3181 and had in respect of the said buses, road licences to ply them between Kandy-Kadugannawa.

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 consideration of a transfer to the said company of the said buses with their route licences and goodwill, shares in the said company to the amount of the value to be assessed on the said buses, their route licences and goodwill.

4. The plaintiff, *inter alios*, accepted the said offer. The said buses of the plaintiff with their route licences and goodwill were assessed at Rs. 3,500. 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 February, 1943, transferred to the defendant company the said buses and consented to the issue to the defendant company of the exclusive road licences in respect of the said buses.

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

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. 3,500.

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. 1,000 per month.

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. 3,500 ;

(*b*) To pay to the plaintiff as damages a sum calculated at the rate of Rs. 1,000 per mensem from the month of February, 1943, up to the date of action and thereafter up to the date of the allotment of the said shares ;

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

Sgd. I. A. B. IHALAGAMA,
*Proctor for plaintiff.*

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No. 3
Answer of the Defendant
28-3-45

## No. 3

## Answer of the Defendant

IN THE DISTRICT COURT OF COLOMBO

W. ARNOLIS APPUHAMY of Kandy.....*Plaintiff*

No. 15929 *vs.*

THE SRI LANKA OMNIBUS COMPANY, LIMITED,
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—

(*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 two omnibuses 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.

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 two licences only, under the Motor Car Ordinance No. 45 of 1938, authorising the use of omnibuses on the route between Kandy-Kadugannawa, 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 ;

(*b*) that in the circumstances, the plaintiff—

1. transferred to the defendant the omnibuses referred to in para 2 of the plaint ;
2. transferred to the defendant the route value and goodwill of the said omnibuses ; 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. 3,500.

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. 3,570 being the consideration of Rs. 3,500 aforesaid and accrued interest on the same at the rate of 10 per cent.

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. 3,500 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. 3,570.

Wherefore the defendant prays :

(*a*) that the plaintiff's action, in so far as he claims judgment in a sum exceeding Rs. 3,570 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.*

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

## No. 4

## Amended Answer of the Defendant

IN THE DISTRICT COURT OF COLOMBO

W. ARNOLIS APPUHAMY of Kandy.....*Plaintiff*

No. 15929. *vs.*

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

The 21st day of September, 1945.

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 plaint :

(*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 two omnibuses 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.

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

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 between Kandy-Kadugannawa 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.

(*b*) that in the circumstances the plaintiff—

1. transferred to the defendant the omnibuses referred to in para 2 of the plaint ;

2. transferred to the defendant the route value and goodwill of the said omnibuses ; 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. 3,500.

No. 4 Amended Answer of the Defendant 21-9-45 —*continued.*

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. 3,570 being the consideration of Rs. 3,500 aforesaid and accrued interest on the same at the rate of 10 per cent.

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. 3,500 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. 3,570.

10. Even if there had been any such offer and acceptance as is pleaded in paras 3 and 4 of the plaint 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 of Rs. 3,570 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.*

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## No. 5

## Judgment of the District Court

No. 5 Judgment of the District Court 19-8-46

D. C. 15929/M. 19-8-46.

### JUDGMENT

On the evidence recorded in D. C. 15925 and for the reasons given in that judgment I 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. 3,500 from 1st February, 1943, to date of allotment of shares.

Plaintiff will be entitled to the costs of the action.

Sgd. W. SANSONI,
*District Judge.*

No. 6
Decree of the District Court
19-8-46

## No. 6

## Decree of the District Court

### DECREE

This action coming on for final disposal before Waldo Sansoni, Esquire, 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.

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. 3,500.

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. 3,500 from 1st February, 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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No. 7
Petition of Appeal of Defendant to the Supreme Court
30-8-46

## No. 7

## Petition of Appeal of Defendant to the Supreme Court

### IN THE SUPREME COURT OF THE ISLAND OF CEYLON

W. ARNOLIS APPUHAMY of Kandy.....*Plaintiff*

No. 15929/D. C. Colombo. *vs.*

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

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

*vs.*

W. ARNOLIS APPUHAMY of Kandy.....*Plaintiff-Respondent.*

*To*

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES OF THE HONOURABLE 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. 3,500 in the defendant-appellant company and for recovery of damages at the rate of Rs. 1,000 per mensem from 2nd February, 1943, until allotment of shares.

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 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. 3,570.

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 action No. 15925 were to be the issues in this and the other actions and that the evidence led in action No. 15925 was to be considered as evidence in this and the other actions.

5. The issues framed in action No. 15925 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 buses Nos. D 2848 and D 3181 together with the goodwill and route licences in consideration of the allotment to the plaintiff shares in the defendant company to the assessed value of the said buses goodwill 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 ?

(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 goodwill and route licence in the circumstances pleaded in paragraph 4 of the answer ?

(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 ?

No. 7 Petition of Appeal of Defendant to the Supreme Court 30-8-46 —*continued.*

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 the promulgation of Ordinance 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 goodwill and route rights shares in the defendant company to the assessed value of such bus goodwill 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 plaintiff-respondent ; and that the plaintiff-respondent refused to accept shares as the defendant-appellant operated its bus services 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. 3,500 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 2nd day of February, 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 goodwill 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, therefore, 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.*

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## No. 8



## Judgment of the Supreme Court

S. C. No. 376/M D. C. (F) Colombo 15925.

*Present :* WIJEYEWARDENE, A.C.J., & 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 at

No. 8
Judgment of the Supreme Court
9-7-48
—*continued.*

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 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 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 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 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.

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 those 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 or 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 allow 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 circumstances 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.

If, therefore, the defendant company was in default in allotting shares to the plaintiff, what damages in 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 these 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 incapable of having the inaccuracies in the balance sheet rectified, and, if need be, by persuading some of the directors

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—*continued.*

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 negativing 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 replacements 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 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 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 re-opened. 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 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 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

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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.*

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

## No. 9

## 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.

W. ARNOLIS APPUHAMY of Kandy.....*Plaintiff-Respondent*

*Against*

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

Action No. 15929/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.

No. 9 Decree of the Supreme Court 9-7-48 —*continued.*

Sgd. CLARENCE DE SILVA,
*Registrar, S. C.*

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## No. 10

No. 10 Application for Conditional Leave to Appeal to Privy Council 2-8-48

## Application for Conditional Leave to Appeal to Privy Council

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.

W. ARNOLIS APPUHAMY of Mulgampola, Kandy..... *Plaintiff*

*vs.*

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

S. C. 380 (F) of 1947 *And*
D. C. Colombo 15929/M.

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

*vs.*

W. ARNOLIS APPUHAMY of Mulgampola, Kandy...*Plaintiff-Respondent.*

*To*

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

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.

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

No. 11. Decree Granting Conditional Leave to Appeal to Privy Council 30-9-48

## No. 11

## 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

W. ARNOLIS APPUHAMY of Mulgampola, Kandy...*Plaintiff-Respondent*

*Against*

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

Action No. 15929 (S. C. No. 380). 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. A. R. H. Canekeratne, K.C., Puisne Justice of this Court, in the presence of counsel for the petitioner and respondent.

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. 1,500 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 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 party 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 30th 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. 12

No. 12 Application for Final Leave to Appeal to Privy Council 28-10-48

## Application for Final Leave to Appeal to Privy Council.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

In the matter of an application for Final Leave to Appeal to His Majesty the King in Privy Council.

W. ARNOLIS APPUHAMY of Kandy.....*Plaintiff*

*vs.*

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

S. C. 380 (F)
D. C. Colombo 15929 *And*

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

*vs.*

W. ARNOLIS APPUHAMY of Kandy.....*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 :—

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.

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. 1,500 and hypothecated by bond the said sum of Rs. 1,500 on the 23rd day of October, 1948, on account of security for costs of appeal in terms of Section 7 (1) of the Appellate Procedure (Privy Council) Order 1921 ;

No. 12 Application for Final Leave to Appeal to Privy Council 28-10-48 —*continued.*

(*b*) A sum of Rs. 300 on the 22nd day of October, 1948, as costs of transcribing the record in term 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.*

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No. 13 Decree Granting Final Leave to Appeal to Privy Council 15-2-49

## No. 13

## 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

W. ARNOLIS APPUHAMY of Kandy.. .....*Plaintiff-Respondent*

*Against*

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

Action No. 15929 (S. C. No. 380 Final) District Court of Colombo.

In the matter of an application by the defendant-appellant dated 28th October, 1948, 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. Canekeratne, K.C., Puisne Justice, and the Hon. Mr. R. F. Dias, Puisne Justice of this Court, in the presence of counsel for the petitioner.

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.*

*No.....*

Supreme Court of Ceylon
No. 380 (Final) of 1947

District Court, Colombo
No. 15929

*In the Privy Council*
*on an Appeal from the Supreme Court of Ceylon*

BETWEEN

W. ARNOLIS APPUHAMY of
Kandy.....*Plaintiff-Respondent*

AND

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

# RECORD OF PROCEEDINGS

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