10, 1958

P.C. Appeal Nos. 18 ~~and 22~~ of 1956.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF CEYLON.

BETWEEN

HERBERT ERNEST TENNEKOON,
Commissioner for Registration of Indian
and Pakistani Residents, Colombo . *Respondent-Appellant*

AND

PUTHUPATTI KITNAN DURAISAMY
of Glentilt Estate, Maskeliya . . *Appellant-Respondent*

~~AND BETWEEN~~

~~HERBERT ERNEST TENNEKOON,~~
Commissioner for Registration of Indian
and Pakistani Residents, Colombo . *Respondent-Appellant*

AND

~~MURUGAPILLAI PANJAN of Letchumy-~~
~~pathy Stores, Iruwanthampola, Koslanda~~ *~~Appellant-Respondent.~~*

Case

on behalf of the Respondent-Appellant as against the above-named Appellant-Respondent PUTHUPATTI KITNAN DURAISAMY.

RECORD.

1. ~~These appeals were consolidated by order of the Judicial Committee of the Privy Council dated the 8th day of May, 1957.~~

The above-named Appellant-Respondent Puthupatti Kitnan Duraisamy is an Indian Tamil whose appeal against the order of a Deputy Commissioner for Indian and Pakistani Residents dated the 25th January, 1954, refusing p. 22.
to register him as a citizen of Ceylon under the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, was allowed by the Supreme Court of Ceylon, from the judgment of which Court, dated the p. 28.
18th February, 1955, the Respondent-Appellant is now appealing.

2. The main question in the appeal is whether the said Appellant-Respondent was permanently settled in Ceylon within the meaning of section 22 of the said Act (as amended by section 4 of the Indian and

Pakistani Residents (Citizenship) (Amendment) Act, No. 37 of 1950). A further question arises whether the said Appellant-Respondent can be heard to say that he was " permanently settled " in Ceylon having regard to the terms of a declaration made by him to the Controller of Exchange, when seeking to remit money abroad, that he was temporarily resident in Ceylon.

3. The Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, which came into operation on the 5th August, 1949, makes provision for the granting to Indian and Pakistani residents in Ceylon who are possessed of a special residential qualification of the status of a citizen of Ceylon by registration, upon the conditions and in the manner therein prescribed. The residential qualification is defined in section 3 as consisting of " uninterrupted residence in Ceylon " immediately prior to the 1st day of January, 1946, for a period of not less than 10 years (in the case of a single person) or 7 years (in the case of a married person) and further of " uninterrupted residence in Ceylon " from the 1st day of January, 1946, until the date of the application for registration. Continuity of residence is to be deemed to be uninterrupted by occasional absences from Ceylon not exceeding twelve months in duration on any one occasion. Section 4 of the Act provides that any Indian or Pakistani resident possessed of this residential qualification " may, irrespective of age or sex exercise the privilege of procuring registration as a citizen of Ceylon for himself or herself, and shall be entitled to make application therefor " in the manner prescribed by the Act. The section further permits the additional registration of wives and of dependant minor children ordinarily resident in Ceylon and, in certain defined circumstances, extends the privilege of procuring registration to widows and orphaned minor children of Indian or Pakistani residents.

4. Section 6 of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949 (as amended by section 3 of the Indian and Pakistani Residents (Citizenship) (Amendment) Act, No. 37 of 1950) provides as follows :—

> " It shall be a condition for allowing any application for registration under this Act that the applicant shall have—
>
> (1) first proved that the applicant is an Indian or Pakistani resident and as such entitled by virtue of the provisions of sections 3 and 4 to exercise the privilege of procuring such registration, or that the applicant is the widow or orphaned minor child of an Indian or Pakistani resident and as such entitled by virtue of those provisions to exercise the extended privilege of procuring such registration ; and
>
> (2) in addition, except in the case of an applicant who is a minor orphan under fourteen years of age, produced sufficient evidence (whether as part of the application or at any subsequent inquiry ordered under this Act) to satisfy the Commissioner that the following requirements are fulfilled in the case of the applicant, namely—
>
> (i) that the applicant is possessed of an assured income of a reasonable amount, or has some suitable business or

employment or other lawful means of livelihood, to support the applicant and the applicant's dependants, if any ;

(ii) where the applicant is a male married person (not being a married person referred to in paragraph (*a*) of section 3 (2)), that his wife has been ordinarily resident in Ceylon, and, in addition, that each minor child dependent on him was ordinarily resident in Ceylon while being so dependent ;

(iii) that the applicant is free from any disability or incapacity which may render it difficult or impossible for the applicant to live in Ceylon according to the laws of Ceylon ;

(iv) that the applicant clearly understand that, in the event of being registered as a citizen of Ceylon—

(*a*) the applicant will be deemed in law to have renounced all rights to the civil and political status the applicant has had, or would, but for such registration in Ceylon, have had, under any law in force in the territory or origin of the applicant or the applicant's parent, ancestor or husband, as the case may be, and

(*b*) in all matters relating to or connected with status, personal rights and duties and property in Ceylon, the applicant will be subject to the laws of Ceylon."

Section 22 of the said Act (as amended by section 4 of the Indian and Pakistani Residents (Citizenship) (Amendment) Act, No. 37 of 1950) defines an " Indian or Pakistani resident " as

" a person—

(*a*) whose origin was in any territory which, immediately prior to the passing of the Indian Independence Act, 1947, of the Parliament of the United Kingdom, formed part of British India or any Indian State, and

(*b*) who has emigrated therefrom and permanently settled in Ceylon,

and includes—

(i) a descendant of any such person ;

and

(ii) any person permanently settled in Ceylon, who is a descendant of a person whose origin was in any territory referred to in the preceding paragraph (*a*) ; "

5. The said Act makes provision for the appointment of an officer to be known as the Commissioner for the Registration of Indian and Pakistani Residents, of Deputy Commissioners and of investigating officers. Applications for registration are to be addressed to the Commissioner or a Deputy Commissioner and are to be in a prescribed form containing all relevant particulars and supported by affidavit. Certified copies of documents may also be submitted. Each application is to be

referred to an investigating officer for investigation and report, and the Commissioner (or Deputy Commissioner) is to take such report into consideration in dealing with the application. Where he is of opinion that there is a *prima facie* case for allowing the application, he must give public notice that, in the absence of any written objection received by him within a month, an order allowing the application will be made, and, in the absence of any such objection, the application is to be allowed. If any objection is received, an enquiry into the nature of the objection is to be ordered.

Where the Commissioner (or Deputy Commissioner) is of opinion that a *prima facie* case has not been established, he must serve on the applicant a notice setting out the grounds on which the application will be refused and giving the applicant an opportunity within three months to show cause to the contrary. If no cause is shown, an order refusing the application is made. If cause is shown, an enquiry is to be ordered, unless the Commissioner (or Deputy Commissioner) takes the steps he is authorised to take when there is a *prima facie* case for allowing an application (s. 9 (3)).

Such enquiry is to be conducted by the Commissioner or a Deputy Commissioner, who is to have all the powers of a District Court to summon witnesses, compel the production of documents and administer oaths, but the proceedings are to be as far as possible free from the formalities and technicalities of the rules of procedure and evidence applicable to a court of law. At the close of such an enquiry, the Commissioner (or Deputy Commissioner) must either take the steps he is authorised to take whenever there is a *prima facie* case for allowing an application, or make an order refusing the application.

Section 15 of the Act provides that an appeal against an order refusing or allowing an application is to lie to the Supreme Court.

6. The above-named Appellant Respondent Puthupatti Kitnan Duraisamy applied on the 29th March, 1951, to be registered under the Act as a citizen of Ceylon together with his family, stating in his application that he was a married man, an Indian or Pakistani resident, had been continuously resident in Ceylon during the period of seven years commencing on the 1st January, 1939, and ending the 31st December, 1945, and from the 1st January, 1946, to the date of the application, and making a declaration in the terms of section 6 (2) (iii) and (iv) of the Act. In his supporting affidavit he deposed that he had been born in India on the 1st July, 1912, and had been married in April, 1932, and that he was employed as Head Clerk at Glentilt Estate, Maskeliya, having also a share of Rs. 2,000 in boutique No. 13, Main Street, Maskeliya. In his covering letter he stated that he came to Ceylon in March, 1931, went back to India for his marriage in April, 1932, and returned to Ceylon with his wife in June, 1934, " from which time I am continually residing in Ceylon with my wife and children. My 4 children are all born in Ceylon.

p. 1.

p. 2, l. 37–p. 3, l. 18.

pp. 4–6.

p. 11.

p. 11, ll. 26–36.

" During the above period of our stay in Ceylon, I had been to India with my family to see my aged parents and relations on 4 occasions and stayed in India not more than 15 days during each trip, and we did not visit India during 1942/1949."

The application was supported by a letter from one M. G. E. de Silva, p. 9.
a Justice of the Peace of Maskeliya, who wrote that from the year 1934
the said Appellant-Respondent and his family had " been continually p. 10, ll. 1-3.
resident in Ceylon with the exception of short leaves which amounted to
not more than one month on each occasion."

In the course of the investigation, the said Appellant-Respondent
produced to the investigating officer a certificate dated 18th August, 1951, p. 9.
from the Superintendent of Brunswick Group, Maskeliya, where he had
been employed from September, 1934, to September, 1944, stating that
" according to Mr. Duraisamy's statement, verified by the Estate records, p. 9, ll. 10-13.
he and his family had been in continuous residence on this estate, except
for short visits to India for about 15 days once in two years."

7. On the 28th January, 1952, the said Appellant-Respondent
answered a questionnaire stating that the only visit he, his wife and minor p. 8.
children had paid to India or Pakistan since 1st January, 1936/1st January,
1939, was a visit to India in April, 1942, for one month to see his mother p. 8, l. 17.
and he further declared that he had remitted sums of Rs. 70 in May, June p. 8, ll. 21-23.
and July, 1951, to India for his mother. He subsequently stated, in answer p. 15, ll. 24-31.
to an enquiry from the office of the Commissioner for the Registration of p. 14.
Indian and Pakistani Residents, that these remittances were made under
the estate-group scheme on special permit obtained from the Exchange
Controller, Colombo, and that he had declared himself on the appropriate
forms of application for this purpose, known as " B " forms, to be
temporarily resident in Ceylon.

8. On the 9th September, 1952, R. T. Ratnatunga, a Deputy p. 16.
Commissioner for the Registration of Indian and Pakistani Residents, gave
the said Appellant-Respondent notice that he had decided to refuse his
application for registration unless he showed cause to the contrary within
a period of three months. The grounds for such refusal were specified as
follows :— p. 17, ll. 2-5.

> " You have failed to prove that you had permanently settled in Ceylon ; the contrary is indicated by the fact that, in seeking to remit money abroad, you declared yourself to be temporarily resident in Ceylon."

The said Appellant-Respondent replied on the 26th September, 1952, p. 17.
stating the purpose of the remittances to be for the maintenance of his
mother and two invalid sisters, and requesting a reconsideration of his case.

The Deputy Commissioner acknowledged this letter on the 9th October, p. 18.
1952, and stated that an enquiry would be held under section 9 (3) of
the Act.

9. At the enquiry, which was held on the 25th January, 1954, before p. 21.
V. D. Adhihetty, a Deputy Commissioner, the said Appellant-Respondent
gave evidence substantially confirming his personal history and circum-
stances as stated in his application. With regard to his visits to India he
said that these were not correctly stated in the Superintendent's certificate

p. 21, ll. 22–26. dated the 18th August, 1951. " The actual visits I paid to India during this period are in June, 1939, May, 1942, and September, 1949. From the time I came to Ceylon in 1939, I have paid 6 visits to India up to date."

As to the remittances to India, his evidence was as follows :—

p. 21, l. 32– p. 22, l. 5. " My mother and sister are dependent on me. From 1935 onwards I have been supporting my mother and sister. Before the Exchange Control I used to send Rs. 25 per month for the maintenance of my mother and sister. I applied to the Controller for a permit in December, 1949. The Controller sent me a General Permit to the Superintendent of the estate, and informed me that I had to remit money through the Estate Group Scheme. Under this permit I sent money to India through the Estate Group Scheme from 1950 March about Rs. 50 a month. I had a renewal permit from 7th April, 1951, authorising me to send Rs. 70 a month. Under this permit I sent three sums of Rs. 70 a month in May, 1951, June, 1951, and in July, 1951. I signed ' B ' Forms under the Estate Group Scheme for the various sums I had remitted to India since 1950 through the Estate Group Scheme, and for each remittance I perfected a ' B ' Form wherein I made a declaration that I was temporarily resident in Ceylon. I ceased sending money from July, 1951, when I came to know definitely that remitting money will affect my Citizenship rights through the Estate Group Scheme. It is a fact that I declared myself temporarily resident in Ceylon for the purpose of remitting money to India."

p. 22, l. 35– p. 23, l. 32. 10. At the end of the enquiry the Deputy Commissioner made an order refusing the application in these terms :—

" On the evidence before me I hold that the applicant was born in India. He came to Ceylon in 1931 and learned work at Brunswick Group. He returned to India in 1932 and got married there. He came back to Ceylon in September, 1934, with his wife and got employed on the same estate. According to the evidence he has paid six visits to India. According to the certificate which the applicant produced to the Investigating Officer from the Superintendent of Brunswick Group on page 11 it is stated that the applicant paid short visits to India for about 15 days once in two years. In April, 1945, the applicant was appointed Head Clerk of Glentilt Estate and he and his family are yet resident there.

" Applicant's domicile of origin is clearly India and there is a presumption that this domicile continues, unless the applicant has adopted a Ceylon domicile of choice, that is, in other words, he had permanently settled in Ceylon. The burden of proof that he had changed his Indian domicile or, in other words, that he had permanently settled in Ceylon as required by section 6 read with section 22 of the Act lies on him. In rebuttal of the presumption referred to the applicant has proved (*a*) Long and continuous residence in Ceylon from 1934 up to date (*b*) that his children were born in Ceylon and (*c*) that he had invested a sum of rupees two thousand in the business of a boutique in Glentilt Bazaar. As regards (*a*) long residence of a person in a foreign country does not

necessarily prove that he has permanently settled in that country. For instance, the majority of European planters at the end of their working careers go back to their homes without a change of domicile. The applicant's long residence is merely due to economic reasons. As regards (*b*) the fact that all his children were born in Ceylon is a mere concomitant of his residence in Ceylon. In regard to (*c*) I should think that this is proof of his starting to do business in Ceylon apart from his employment. The applicant has admitted that he has made several remittances to India from March, 1950, to July, 1951, through the Estate Group Scheme, by perfecting ' B ' Forms wherein he declared that he was temporarily resident in Ceylon. The applicant is an educated man and he knew the implications of declaring that he was temporarily resident in Ceylon.

" There is clear evidence that the presumption referred to above has not been rebutted. On his own admission he was temporarily resident in Ceylon at the date of his application. The application is therefore refused."

11. By Petition of Appeal dated the 24th April, 1954, the said Appellant-Respondent appealed against this order to the Supreme Court of Ceylon. p. 24.

12. The appeal was first argued on the 23rd July and the 30th July, 1954, before Fernando, A.J., when it appeared to have been accepted by both sides that it is necessary for an applicant for registration under the Act, in addition to the other requirements, to prove a particular *animus*, namely an intention to settle permanently in Ceylon, and the argument appeared to have turned on the nature and proof of such *animus*. The learned judge on the 6th August, 1954, reserved the case for the decision of two or more judges as the Chief Justice should determine, and, in stating his decision, thus referred to the argument before him :— p. 26, l. 12. p. 27, ll. 23–24.

" The Deputy Commissioner was of the opinion that the words ' permanently settled in Ceylon ' (which occur in the definition) are equivalent to ' domiciled by choice in Ceylon,' and that the presumption of the continuance of the applicant's Indian domicile of origin has not been rebutted by the evidence adduced in support of the application. p. 26, l. 23– p. 27, l. 12.

" Counsel on both sides appeared to agree that, having regard to the other requirements in the Act as to a minimum period of residence in Ceylon and as to the residence, together with an applicant, of his wife and minor children, the requirement of ' permanent settlement ' imposed by S. 22 calls mainly for proof of *an intention to settle permanently in Ceylon.*

" Counsel for the appellant urged firstly that the requisite intention is something less than the *animus* which must be proved to establish the acquisition of a domicile of choice, and secondly that even if the Deputy Commissioner's view of the law was correct the applicant in the present case has proved such an *animus* and has thus satisfied the requirement in question.

" Crown Counsel has, however, contended that the requisite intention is different from and perhaps of greater conclusiveness than the *animus* necessary to support a change of domicile; in brief that evidence establishing the acquisition of a Ceylon domicile of choice does not necessarily suffice to establish the intention of ' permanent settlement '."

p. 28, l. 14. 13. On the 7th and 8th February, 1955, the appeal was heard by a bench consisting of Gratiaen, J., and Sansoni, J.

p. 28. On the 18th February, 1955, the Court delivered judgment allowing
p. 34, ll. 19–23. the appeal with costs and directing the Commissioner to take the appropriate steps under the Act on the basis that a *prima facie* case for registration had been established.

The learned Judges in giving their judgment said :—

p. 29, ll. 7–21. " The main provisions of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949 (hereinafter called ' the Act '), must now be examined with special reference to the qualifications prescribed for acquiring citizenship by registration. Bearing in mind the legislative plan as a whole, we conclude generally that the intention was to admit any Indian or Pakistani residing in Ceylon to the privilege of Ceylon citizenship (if claimed within a stipulated period of time) provided that he satisfied *certain tests prescribed by statute for establishing that his association with the Island could not (or could not longer) be objected to as possessing a migratory or casual character.*

" The main question before us relates to the meaning of the words ' permanently settled in Ceylon ' in Section 22 of the Act (as amended by Section 4 of Act No. 37 of 1950) which defines an ' Indian or Pakistani resident '.

* * * * *

p. 30, l. 1–
p. 32, l. 16. " Section 6 (1), read with Section 22, directly raises the question whether an applicant is ' permanently settled in Ceylon '. We therefore propose to postpone our discussion of Section 6 (1) until we have first examined the other special qualifications and conditions for registration prescribed by the Act :—

(1) the applicant must possess a minimum qualification of ' uninterrupted residence ' as defined in Section 3 ;

(2) his wife (if he is married) and his minor dependant children (if any) must also possess certain residential qualifications—Section 6 (2) (ii) in its recently amended form ;

(3) he must establish a reasonable degree of financial stability —Section (6) (2) (i) ;

(4) he must be free from any disability or incapacity of the kind referred to in Section 6 (2) (ii) ;

(5) he must ' clearly understand ' the statutory consequence of registration—Section 6 (2) (iv).

One observes in all these requirements an underlying decision to deny Ceylon citizenship to non-nationals whom Parliament for one reason or another would consider unsuitable for that privilege. Hence the insistence on the long and ' uninterrupted ' residence of the applicant himself and on the residential qualifications of his immediate family (if any) regarded as a unit; and the further safeguard that his prospects of useful citizenship were not likely to be endangered by poverty or other handicaps. Each of these requirements, if satisfied, would guarantee a more enduring quality to the tie between the new citizen and the country which he has elected to adopt, ' for better, for worse,' as his own.

" The requirement that the applicant must establish a minimum period of residence is easily explained. ' A presumption of domicil grows in strength with the length of the residence . . . A residence may be so long and continuous as to raise a presumption that is rebuttable only by actual removal to a new place.' Cheshire's Private International Law (4th edition) page 159. Similarly, the fact that a man's immediate family shares his connection with the country of disputed domicil is an extremely relevant factor for consideration. The imposition of these statutory standards relieves the investigating authority of the duty of deciding by mere legal inference whether an applicant's residence bears in the circumstances of any particular case a sufficient degree of permanency. Equally significant is the requirement that an applicant ' clearly understands ' the serious consequences which automatically flow from registration under the Act—namely (1) a statutory renunciation of the man's former political status and (2) the change in civil status which automatically results under the rules of private international law from a change of domicil. Here again the legislature has laid down in positive terms another well-established test of permanency (instead of leaving the applicant's intentions to be judicially ascertained by inference).

" In ordinary litigation, a man may be held to have acquired a domicil of choice although the far-reaching consequences involving a change of civil status may never have entered his mind. The Court must then decide as best as it can whether the circumstantial evidence justifies a legal inference that ' if the question had arisen in a form requiring a deliberate or solemn determination,' the person whose domicil was in dispute would have elected to renounce his former civil status and ' to assume a position for the like purposes as a citizen of another (country) ' per Wickens, V.C., in *Douglas* v. *Douglas* (1872) L.R. 12 Eq. 617. This formula was approved and applied by Lord MacNaghten in his notable judgment in *Winans* v. *Attorney-General* (1904) A.C. 287. The local Act has advisedly taken the precaution of substituting a positive for an inferential test. The necessity of ' making an election between the two countries' is directly addressed to his mind, and his choice must be deliberately and solemnly made with a full appreciation of all that the decision involves. If this positive test is satisfied, there is neither scope nor necessity for probing further into his state of mind in order to ascertain (by inference or perhaps by guesswork) his actual intentions.

RECORD.

" An Indian or a Pakistani residing in Ceylon is in our opinion entitled as of right to exercise the privilege of being registered as a citizen of Ceylon if at the time of his application (made within the requisite period of time)—

" (1) He and his family (if any) possess the residential qualifications respectively prescribed for them by the Act, and he demonstrates his intention to settle permanently in Ceylon by electing irrevocably to apply for registration ; and

" (2) he satisfies all the other relevant conditions laid down in Section 6 (2) of the Act ; and

" (3) the requirement as to ' origin ' in paragraph (*a*) of the words of the definition is satisfied, or he is at least a descendant of a person whose origin was as aforesaid.

" We agree with the Crown that the words ' permanently settled in Ceylon ' mean nothing less than ' having acquired a domicile on choice in Ceylon ' ; indeed, they mean something else as well, namely, that the applicant has also made a deliberate decision to renounce his former political status.

" Once these exacting statutory tests have all been satisfied, the man's previous residence in this country assumes (unless it has already done so) the requisite degree of ' permanency ' and Ceylon has become his ' home.' His solemn ' election between the two countries ' in favour of Ceylon dispels any suspicion that his association with Ceylon may be merely casual or migratory. The concept of ' permanent settlement ' doubtless involves two elements, the fact of residence as well as the intention permanently or at least indefinitely to remain in this country. But in the context of the Act, the requisite intention is satisfactorily established by the applicant's positive decision to claim registration with a ' clear understanding ' of its implications. The condition laid down in Section 6 (1) is thus fulfilled. The gravity of the consequences of registration must be assumed to provide an adequate safeguard against an application by a person who does not genuinely intend to renounce his former status as a citizen of his country of origin."

The learned Judge concluded—

p. 33, l. 39–p. 34, l. 23.

" In this view of the matter, the appellant was clearly entitled to succeed in his application. He and his wife resided in Ceylon since 1934, Their minor children live with them and attend school in this country. He has always enjoyed the benefits of fixed employment in Ceylon ; his modest savings have been invested here and he has no ties with India except those of natural affection for his widowed mother and his two sisters (whom he dutifully wishes to support). He has ultimately made a genuine decision to cement his long association with this country by claiming the privileges of Ceylon citizenship with a clear understanding of the consequences which will result from registration. We can conceive of no better example of the kind of ' suitable ' person whom Parliament had in mind when the Act passed into law. He has satisfied all the onerous

statutory conditions prescribed, and the circumstance that, in a very different context, he incorrectly described his residence in this country as ' temporary ' in order to facilitate (in violation of the ' exchange control ' regulations) the forwarding of the usual subsistance allowances to his mother and his sisters abroad cannot disqualify him. Indeed, even if the question had arisen for determination by an ' understanding ' judge on the issue of domicile, this isolated circumstance would have carried no weight in view of the other compelling factors established in his favour. The decision appealed from seems to us to have been reached in accordance with some predetermined department formula (evidenced by identical preliminary orders made by different officers of the Department in different areas) which is not warranted by the Act. We allow the appeal and direct the Commissioner to take appropriate steps under Section 14 (7) of the Act, on the basis that a *prima facie* case for registration has been established to the satisfaction of this Court. The Appellant is entitled to the costs of this appeal."

14. On the 16th March, 1955, the Respondent-Appellant applied to the Supreme Court of Ceylon for Conditional Leave to Appeal to the Privy Council. The application was heard on the 16th and 17th June, 1955, when it was contended on behalf of the said Appellant-Respondent that the judgment from which it was sought to appeal was not a judgment in a " civil suit or action in the Supreme Court " within the meaning of section 3 of the Appeals (Privy Council) Ordinance. On the 20th December, 1955, the Supreme Court gave judgment on the application rejecting this contention and granting the Respondent-Appellant Conditional Leave to Appeal to the Privy Council. It is submitted that the Supreme Court was right in holding that the judgment in question is a " civil suit or action in the Supreme Court " within the meaning of the section referred to and that the recent decision of the Supreme Court of Ceylon in *Silver Line Bus Co. Ltd.* v. *Kandy Omnibus Co. Ltd.*, 58 New Law Reports 193, interpreting this phrase in the narrower sense of a regular civil proceeding in which one party sues for or claims something from another, is erroneous or can be distinguished.

p. 36. p. 38, l. 14. p. 39, ll. 5–9. pp. 38–42.

On the 2nd February, 1956, the Respondent-Appellant was granted Final Leave to Appeal.

p. 47.

15. The Respondent-Appellant submits that the Supreme Court of Ceylon was wrong in holding (as, it is submitted, it did hold) that the requirement in the Act of " permanent settlement " is satisfied by mere proof of residence for the required period together with compliance with the various statutory tests. It is submitted that over and before the proof of these matters, the Act in express terms provides that an applicant must prove that he is an Indian or Pakistani resident, which by definition includes that he is permanently settled in Ceylon. It is respectfully submitted that there is no justification in the Act for the interpretation given to this requirement by the Supreme Court and that the effect of such an interpretation would be to deny any meaning to the phrase " permanently settled in Ceylon " in section 22 of the Act (as amended) and to treat it as mere surplusage.

16. As to the merits of the application made by the said Appellant-Respondent for registration under the Act, the Respondent-Appellant submits that he is bound by the declaration made by him to the Controller of Exchange that he was temporarily resident in Ceylon, in reliance on which the permit to remit money abroad was issued, and that he cannot in these proceedings be heard to say in contradiction of the express terms of such declaration that he was permanently settled in Ceylon. At the least such declaration amounted to a formal affirmation of intention so far as his future residence and settlement were concerned and, it is submitted, it is not now open to the said Appellant-Respondent to claim, for the purpose of obtaining registration as a citizen of Ceylon under this Act, an *animus* different from and directly contrary to that unequivocally expressed by him in his application to the Controller of Exchange.

17. In any event, it is submitted that this declaration constituted important and weighty evidence upon the issue of whether or not the said Appellant-Respondent was permanently settled in Ceylon and that having regard to this it is clear that on the evidence the said Appellant-Respondent failed to discharge the onus that lay upon him of showing that he was so settled. It is submitted that in order to constitute permanent settlement there must be present at least all the elements necessary to establish a domicile of choice and that the evidence adduced by the Respondent fell short of establishing this.

18. The Respondent-Appellant humbly submits that the judgment and order of the Supreme Court of Ceylon of the 18th February, 1955, are erroneous and should be reversed and the order of the Deputy Commissioner of the 25th January, 1954, should be restored with costs for the following amongst other

REASONS

(1) BECAUSE the Indian and Pakistani Residents (Citizenship) Act, 1949, expressly requires applicants for registration to prove that they are permanently settled in Ceylon.

(2) BECAUSE proof by an applicant that he has resided in Ceylon for the required period and that he satisfies the statutory tests imposed by the Act does not of itself constitute proof that he is permanently settled in Ceylon.

(3) BECAUSE having regard to the declarations made by the said Appellant-Respondent to the Controller of Exchange that he was temporarily resident in Ceylon he cannot in these proceedings be heard to say in contradiction of such declarations that he is permanently settled in Ceylon.

(4) BECAUSE the said Appellant-Respondent failed to prove that he is permanently settled in Ceylon.

(5) BECAUSE the said Appellant-Respondent is a person who has not, within the meaning of section 6 (1) of the

Act, proved that he is a Pakistani or Indian resident and is accordingly not entitled under the provisions of the Act to be registered.

(6) BECAUSE the Supreme Court having applied what is submitted to be a wrong test, the findings of the Deputy Commissioner should be treated as having been undisturbed.

(7) BECAUSE on the evidence before him the Deputy Commissioner's findings ought not to be disturbed.

10 (8) BECAUSE the order of the Deputy Commissioner was right for the reasons therein stated and the judgment of the Supreme Court was wrong.

FRANK SOSKICE.

MONTAGUE SOLOMON.

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ON APPEAL

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BETWEEN

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~~MURUGAPILLAI PANJAN of Letchumypathy Stores, Iruwanthampola, Koslanda *Appellant-Respondent.*~~

Case

on behalf of the Respondent-Appellant as against the above-named Appellant-Respondent PUTHUPATTI KITNAN DURAISAMY.

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