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Supreme Court of Ceylon  
No. 94 (Final) of 1951.

District Court, Colombo,  
No. 21772.

IN HER MAJESTY'S PRIVY COUNCIL  
ON AN APPEAL FROM  
THE SUPREME COURT OF CEYLON.

BETWEEN

T. A. K. DE SILVA of Hospital Street, Fort, Colombo.

*Plaintiff-Appellant.*

AND

HIRDRAMANI LIMITED of 65/69, Chatham Street,  
Fort, Colombo.

*Defendant-Respondent.*

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RECORD  
OF PROCEEDINGS

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Supreme Court of Ceylon  
No. 94 (Final) of 1951.

District Court, Colombo,  
No. 21772.

IN HER MAJESTY'S PRIVY COUNCIL  
ON AN APPEAL FROM  
THE SUPREME COURT OF CEYLON.

BETWEEN

T. A. K. DE SILVA of Hospital Street, Fort, Colombo.  
*Plaintiff-Appellant.*

AND

HIRDRAMANI LIMITED of 65/69, Chatham Street,  
Fort, Colombo. *Defendant-Respondent.*

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RECORD OF PROCEEDINGS

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PART I.

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**No. 1.****Journal Entries.**

No. 1.  
Journal  
Entries.  
14-9-49 to  
20-3-53.

## IN THE DISTRICT COURT OF COLOMBO.

T. K. DE SILVA.

No. 21772/M

*Plaintiff.*

Class: II.

*vs.*

Amount: Rs. 2,250/- HIRDRAMANI LTD.

Nature: Money.

*Defendant.*

Procedure: Regular.

10

## JOURNAL.

(1) This 14th day of September, 1949.

Messrs. Abeyratne & Abeyratne file appointment  
(1a) andPlaint (1b) together with documents marked "A"  
(1a)

Plaint accepted and summons ordered for 4-11-49.

Sgd. H. A. DE SILVA,

*D. J.*

(2) Summons issued on defendant.

20

(3) 4-11-49. Summons served on the Manager of the defen-  
dant Co.

Proxy filed. Answer 9-12.

Intld. S. J. C. S.

(4) 9-12-49. Messrs. Julius &amp; Creasy for defendant.

Answer filed.

Call in "C" Ct to fix trial date.

Intld. S. J. C. S.

(5) 9-12-49. Trial 13-7-50.

Intld. K. D. DE S.

*A. D. J.*

30

No. 1,  
Journal  
Entries,  
14-9-49 to  
20-3-53.

—continued

- (5a) Deficiency Rs. 3/- due.  
On Proxy on 27-1-50.
- (6) 12-12-49. Deficiency called for.  
Intld.....
- (7) 19-12-49. *Vide* letter no deficiency is due.  
Intld.....
- (8) 22-6-50. Proctors for plaintiff move to amend the plaint by  
adding a para after para 8 thereof and plaint  
(8a) annexed. Defendant's Proctors received notice  
for 23-6-50. 10  
Call on 23-6-50.  
Intld. H. A. DE S.  
*D. J.*
- (9) 23-6-50. Messrs. Abeyratne & Abeyratne for plaintiff.  
Messrs. Julius & Creasy for defendant Co.  
Case called—*Vide* J. E. (8).  
*Vide* proceedings.  
Intld. H. A. DE S.  
*D. J.*
- (10) 30-6-50. **Case Called *Vide* (9).** 20  
Messrs. Abeyratne & Abeyratne for plaintiff.  
Messrs. Julius & Creasy for defendant.  
Amended answer due. Filed.  
Trial on due date.  
Intld. K. D. DE S.  
*A. D. J.*
- (11) 8-7-50. Proctors for plaintiff file list of witness and docu-  
ments and move for summons on the witnesses.—  
Proctor for defendant received notice.  
Allowed re 1 & 2. Obtain certified copies. 30  
No summons on 1 & 2.  
Intld. K. D. DE S.  
*A. D. J.*

- (12) 10-7-50. Summons issued on 1 witness by plaintiff.
- (13) 12-7-50. Proctors for defendant file list of witnesses.  
Plaintiff's Proctors received notice.  
File.  
Intld.....  
A. D. J.
- (14) 13-7-50. **Trial Vide (5).**  
Messrs. Abeyratne & Abeyratne for plaintiff.  
Messrs. Julius & Creasy for defendant.  
10 *Vide* proceedings.  
Trial postponed 11-9-50.  
Intld. K. D. DE S.  
A. D. J.
- (15) 11-9-50. **Trial Vide (14).**  
Messrs. Abeyratne & Abeyratne for plaintiff.  
Messrs. Julius & Creasy for defendant.  
*Vide* proceedings.  
Trial on 12-10-50.  
Intld. K. D. DE S.  
A. D. J.
- (16) 12-10-50. **Trial Vide (15).**  
Messrs. Abeyratne & Abeyratne for plaintiff.  
Messrs. Julius & Creasy for defendant.  
*Vide* proceedings.  
Judgment on 26-10-50.  
Intld. K. D. DE S.  
A. D. J.
- (17) 26-10-50. Authorities cited not submitted.  
Judgment on 3-11-50.  
30 Intld. K. D. DE S.  
A. D. J.

No. 1.  
Journal  
Entries.  
14-9-49 to  
20-3-53.  
—continued

- (18) 3-11-50. Judgment delivered in open Court.  
Enter decree accordingly.  
Intld. K. D. DE S.  
A. D. J.
- (19) Decree entered.  
Intld.....  
4-11.
- (20) 10-11-50. Messrs. Julius & Creasy, Proctors tender Petition of Appeal of the Defendant-Appellant against the judgment of this Court dated 3-11-50 and move that the same be accepted. They also tender stamps to the value of Rs. 18/- viz. Rs. 12/- on S. C. Decree form and Rs. 6/- for Certificate in Appeal. 10  
Stamps affixed to S. C. Decree form (20b) Rs. 12/- and Certificate in Appeal (20a) Rs. 6/- and cancelled.  
Accept.  
Intld. K. D. DE S.  
D. J. 20
- (21) 10-11-50. The Petition of Appeal of the Defendant-Appellant having been received by Court, Proctors for Defendant-Appellant move that they will on 17-11-50 (or sooner if possible) deposit in Court to the credit of this action a sum of Rs. 100/- as Security for the Plaintiffs-Respondents' costs of Appeal, and will on the same day tender to Court stamps to the value of Rs. 4/20 to cover the expenses of serving the notice of Appeal.  
Proctors for Plaintiff-Respondent received notice with copy Petition of Appeal. 30  
Call on 17-11-50.  
Intld. K. D. DE S.  
D. J.
- (22) 10-11-50. Proctors for Defendant-Appellant file application for typewritten copies of the record and apply for a Paying-in-Voucher for Rs. 24/-.  
Issue Paying-in-Voucher for Rs. 24/-.  
Intld. K. D. DE S.  
D. J. 40



- (23) 10-11-50. The Petition of Appeal of the Defendant-Appellant having been received by Court, Proctor having for Defendant-Appellant, with consent of Proctors for Plaintiff-Respondent, tender Rs. 100/- as security for Plaintiff-Respondent's Costs of Appeal and move for an order to deposit the sum in the Colombo Kachcheri, and also further move to allow the Notice of Appeal on the Plaintiff-Respondent to be issued for service on his Proctors.

10

Issue Voucher for Rs. 100/-.

Call on 17-11-50.

Intld. K. D. DE S.

*D. J.*

- (24) 14-11-50. (i) Paying-in-Voucher for Rs. 24/- on account of Copying fees *Vide* J.E. (22) issued.  
(ii) Paying-in-Voucher for Rs. 100/- on account of Security Deposit *Vide* J.E. (23) issued.

Intld.....

- 20 (25) 17-11-50. Messrs. Abeyratne & Abeyratne for Plaintiff-Respondent.

Messrs. Julius & Creasy for Defendant-Appellant.

Case called—*Vide* J.E. E (21) and (23).

Amount affixed is accepted.

Issue Notice of Appeal for 19-1-51 on bond being perfected and filed.

Intld. H. A. DE S.

*D. J.*

- 30 (26) 18-11-50. Proctor for Defendant-Appellant tender Notice of Appeal (26a) in duplicate duly stamped together with Copy of Petition of Appeal and Precept to Fiscal for service, Bond duly perfected (26b) hypothecating the sum of Rs. 100/- deposited as Security, Kachcheri Receipt No. A/9 79338/1280 of 14-11-50 for Rs. 100/- (26c) being Security Deposit for Costs in Appeal and Kachcheri Receipt No. A/9 79337/1279 (26d) of 14-11-50 for Rs. 24/- being fees for typewritten Copies of the record.

40

1. File.

2. Issue Notice of Appeal for the date already given.

Intld. K. D. DE S.

*D. J.*

No. 1.  
Journal  
Entries  
14-9-49 to  
20-3-53.  
—continued

(26c) 18-11-50. Kachcheri Receipt No. A/9 79338/1880 of 14-11-50 for Rs. 100/- on account Security Deposit filed.

(26d) 18-11-50. Kachcheri Receipt No. A/9 79337/1279 of 14-11-50 on account of fees for typewritten copies filed.

(27) 21-11-50: Notice of Appeal issued for service on Proctor for Plaintiff-Respondent to Fiscal, W. P.

Intld.....

(28) 30-11-50. *Vide* memo from Appeal Branch to call for fees from :

Proctor for Appellant .... Rs. 24.00 10

Proctor for Respondent .... ,, 24.00

Call for.

Intld.....

(29) 12-12-50. *Vide* (28) above. Issued two Vouchers with covering letters.

Intld.....

(30) 16-12-50. K.R. No. 86630 d/d 15-12-50 for Rs. 24/- being copying fees filed.

Intld.....

(31) 21-12-50. K.R. A/9 No. 2138/87623 of 21-12-50 for Rs. 24/- filed. 20

(32) 19-1-51. Messrs. Abeyratne & Abeyratne for Plaintiff-Respondent.

Messrs. Julius & Creasy for Defendant-Appellant.

Notice of Appeal served on Proctors for Plaintiff-Respondent.

Forward record to Supreme Court.

Intld.....

*D. J.*

(33) 23-2-51. Record forwarded to Registrar S. C. with two briefs. 30

Intld.....

*Secretary.*

- (34) 18-3-53. Registrar Supreme Court returns record (34) together with the S. C. Judgment (34a).  
 The Appeal is allowed and the plaintiff's action is dismissed with costs both here and Court below.

No. 1.  
 Journal  
 Entries.  
 14-9-49 to  
 20-3-53  
 —continued

Proctors to note.

Intld.....

*D. J.*

- 10 (35) 18-3-53. The Defendant-Appellant's Appeal in this case having been allowed with costs in both Courts, Proctors for defendant move to withdraw the sum of Rs. 100/- deposited by them as security for Plaintiff-Respondent's costs in Appeal. Proctors for plaintiff consent.

Pay.

Intld.....

- (36) 20-3-53. Requisition No. 1393 for Rs. 100/- issued in favour of the Proctors for defendant

Intld.....

Intld.....

*Asst. Secretary,*

*Adm. Secretary & District Judge,*

D. C. Colombo.

Colombo.

20

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**No. 2.**

**Plaint of the Plaintiff.**

No. 2.  
 Plaint  
 of the  
 Plaintiff.  
 14-9-49.

IN THE DISTRICT COURT OF COLOMBO.

T. A. K. DE SILVA of Hospital Street,  
 Colombo. *Plaintiff.*

No. 21772/M  
 Nature Money

vs.

Procedure: Regular HIRDRAMANI LIMITED, of 65/69, Chat-  
 Claim: Rs. 2,250/- ham Street, Fort, Colombo. *Defendant.*

30 On this 14th day of September 1949.

The plaint of the plaintiff abovenamed appearing by Arthur Henry Abeyratne and George Cuthbert Abeyratne his Proctors practising in partnership under the name style and firm of "Abeyratne & Abeyratne", states as follows:—

No. 2.  
Plaint  
of the  
Plaintiff.  
14-9-49.  
—continued

1. The parties reside, the contract sought to be enforced was made and the cause of action pleaded herein arose at Colombo within the local limits of the jurisdiction of this Court.

2. The defendant is a Company with limited liability duly incorporated under the Companies Ordinance and having its registered office within the jurisdiction of this Court. The Defendant-Company was duly incorporated on the 27th June, 1946.

3. Prior to the said incorporation the business of the Defendant-Company was carried on by Parmanand Tourmal under the name style and firm of "HIRDRAMANI".

10

4. On or about the 29th day of January, 1944, the said Parmanand Tourmal on his behalf and on behalf of his heirs executors and administrators agreed in writing with the plaintiff *inter alia*; (i) In consideration of the services rendered by the plaintiff and as long as one C. P. Wijeratne (who was a party to the said agreement) is employed under him to pay to the plaintiff as from the 1st day of February, 1944, monthly at the end of each and every month a sum of Rs. 150/- during the lifetime of the plaintiff.

(ii) In the event of the said C. P. Wijeratne being dismissed from service or being incapacitated by illness or otherwise or leaving the service of Hirdramani at any time or in the event of the death of the plaintiff then the payments to the plaintiff of the said sum shall immediately cease. The said agreement is herewith marked letter "A" and pleaded as part and parcel hereof.

20

5. The said Parmanand Tourmal in pursuance of the said agreement paid to the plaintiff every month the said sum of Rs. 150/- until the business of Hirdramani was converted into a limited liability Company on the said 27th June 1946.

6. Thereafter the Defendant-Company undertook the liability of Parmanand Tourmal to pay the said sum of Rs. 150/- per month to the plaintiff and continued to pay the plaintiff the said sum of Rs. 150/- without default.

30

7. The said Parmanand Tourmal died on or about the 23rd March, 1948.

8. That after the death of the said Parmanand Tourmal the Defendant-Company has wrongfully and unlawfully refused to continue the said payments to the plaintiff in terms of the said agreement and the plaintiff is entitled to the date hereof to the payment of a total sum of Rs. 2,250/-.

9. The plaintiff pleads that in the premises aforesaid he is legally entitled to the payment by the Defendant-Company of the sum of Rs. 2,250/- being the sum due to the plaintiff as aforesaid from the month of June 1948, to the month of August 1949, (inclusive) and to further payments of Rs. 150/- per mensem from the end of September onwards.

No. 2.  
Plaint  
of the  
Plaintiff  
14-9-49.  
—continued

10. A cause of action has thus accrued to the plaintiff to sue the Defendant-Company for the recovery of the said sum of Rs. 2,250/- and for judgment entitling him to the monthly payment of Rs. 150/- in terms of the said agreement which sum or any part thereof the Defendant-Company has refused to pay though thereto often demanded.

Wherefore the plaintiff prays :—

- (a) For judgment against the Defendant-Company for the said sum of Rs. 2,250/- together with legal interest thereon from date hereof till payment in full.
- 20 (b) For judgment against the Defendant-Company declaring the plaintiff entitled to the monthly payment of Rs. 150/- from the month of September 1949 onwards in terms of the agreement together with legal interest on the total sum due up to the date of decree till payment in full.
- (c) for costs of suit, and
- (d) for such other and further relief in the premises as to this Court shall seem meet.

Sgd. ABEYRATNE & ABEYRATNE,  
*Proctor for Plaintiff.*

DOCUMENTS FILED HEREWITH

Agreement dated 29th January, 1944.

Settled by

30 MR. ADV. L. WEERAMANTRY.

Sgd. ABEYRATNE & ABEYRATNE,  
*Proctors for Plaintiff.*

## P 1.

"A"

THIS AGREEMENT MADE AND ENTERED INTO between PARMANAND TOURMAL carrying on business at No. 65/69, Chatham Street, Colombo, under the name and style of HIRDRAMANI hereinafter referred to as "Mr. Parmanand" (which term as herein used shall mean and include the said Parmanand Tourmal his heirs, executors and administrators) of the one part and THENUWERA ACHARIGE KARNOLIS DE SILVA of Ambalangoda (hereinafter referred to as "Silva") and ALAHENDRAGE ACHARIGE CHARLES PERERA WIJERATNE of Kalutara (hereinafter referred to as "Wijeratne") of the other part.

10

Whereas the said Silva and Wijeratne have for some time past been employed under Mr. Parmanand as leading jewellery maker and Assistant respectively.

And whereas Silva has agreed with Mr. Parmanand to retire from service as leading jewellery maker in the firm of Hirdaramani and has requested Mr. Parmanand to employ Wijeratne as his leading jewellery maker which Mr. Parmanand has agreed to do subject to the terms and conditions hereinafter set forth.

20

NOW THIS AGREEMENT WITNESSETH and it is hereby mutually covenanted and agreed between the parties hereto as follows:—

(a) The said Silva shall retire as leading jewellery maker in the firm of Hirdramani as from the first day of February One thousand nine hundred and Forty Four and shall in consideration of the sum of Rupees Four Hundred and Seventy five (Rs. 475/-) being the purchase price, deliver to Mr. Parmanand all machines tools and other implements that are now at Hirdramani and owned by Silva.

30

(b) The said Wijeratne shall as from the 1st day of February One thousand nine hundred and forty four serve under Mr. Parmanand as leading jewellery maker on such remuneration as may be agreed upon from time to time and shall devote his whole time and attention to such work and shall not work for any other person or firm whomsoever without the consent first had and obtained from Mr. Parmanand.

(c) In consideration of the services rendered as aforesaid by Silva and as long as Wijeratne is employed under Mr. Parmanand he Mr. Parmanand shall as from 1st February

40

One thousand nine hundred and forty four pay to Silva monthly at the end of each and every month a sum of Rupees One hundred and Fifty (Rs. 150/-) during the life time of Silva.

No. 2.  
Plaint  
of the  
Plaintiff.  
14-9 49.  
—continued

- (d) Towards the payment of the aforesaid monthly sum of Rupees One hundred and Fifty (Rs. 150/-) by Mr. Parmanand he the said Wijeratne shall contribute a sum of Rupees Seventy five (Rs. 75/-) monthly from his remuneration.
- 10 (e) The said Silva shall be at absolute liberty to undertake orders and carry on his usual business of jewellery maker.
- (f) In the event of the said Wijeratne dying or being dismissed from service or being incapacitated by illness or otherwise or leaving the service of Hirdramani at any time or in the event of the death of Silva then the payment to Silva of the said sum of Rupees One hundred and Fifty (Rs. 150/-) shall immediately cease anything herein contained to the contrary notwithstanding.
- 20 (g) In the event of the said Wijeratne proving at any time hereafter in the opinion of Mr. Parmanand incompetent, insurbordinate, negligent or dishonest then it shall be lawful for Mr. Parmanand to dismiss Wijeratne immediately and in that event this Agreement shall cease and be of no avail.
- (h) In addition to any other remuneration that Mr. Parmanand shall pay to Wijeratne for his service as leading jewellery maker and as long as the said Wijeratne shall serve Mr. Parmanand he Mr. Parmanand shall pay to Wijeratne monthly at the end of each and every month as from 1st February One thousand nine hundred and Forty four the sum of Rupees Fifty (Rs. 50/-) as salary.
- 30

IN WITNESS WHEREOF the said Parmanand Tourmal, the said Thenuwera Acharige Karnolis de Silva and the said Alahendrage Acharige Charlis Perera Wijeratne do set their respective hands hereunto at Colombo on this Twenty ninth day of January One thousand nine hundred and Forty four.

WITNESSES:—

Signatures.

Sgd. Illegibly.  
*Proctor, S. C., Colombo.*

T. PARMANAND.  
T. A. K. DE SILVA.  
C. P. WIJERATNE.

Sgd. Illegibly.

No. 3.  
Answer  
of the  
Defendant.  
5-12-49.

**No. 3.**

**Answer of the Defendant.**

IN THE DISTRICT COURT OF COLOMBO.

T. A. K. DE SILVA of Hospital Street,  
Fort, Colombo. *Plaintiff.*

No. 21772/M.

*vs.*

HIRDRAMANI LIMITED of 65/69 Chat-  
ham Street, Fort, Colombo. *Defendant.*

On this 5th day of December, 1949.

The answer of the defendant abovenamed appearing by Geoffrey Thomas Halè, Frederick Claude Rowan, Joseph Francis Martyn and Hendrick Theodore Perera carrying on business in partnership in Colombo under the name, style and firm of Julius & Creasy and their assistants Alexander Nereus Wiratunga, John Peter Edmund Gregory, James Arelupar Naidoo, Alexander Richard Neville de Fonseka, Behram Kaikhushroo Billimoria, Lena Charlotte Fernando, Mohamed Shereeff Mohamed Shabdee and Rex Sebastian Philips, Proctors, states, as follows:— 10

1. Answering paragraph 1 of the plaint the defendant denies that a cause of action has arisen against the defendant. 20

2. The defendant admits the averments in paragraphs 2, 3 and 4 of the plaint.

3. The defendant admits the averments in paragraph 5 of the plaint and further states that C. P. Wijeratne entered the service of the defendant in or about June, 1946.

4. Answering paragraph 6 of the plaint the defendant states that under the agreement referred to the liability of Parmanand Tourmal to pay the plaintiff Rs. 150/- a month ceased when C. P. Wijeratne entered the service of the defendant in or about June, 1946, but the defendant continued to make payments to the plaintiff until June, 1948; without any legal obligation on its part to do so. The defendant specially denies that it undertook the liability of Parmanand Tourmal to pay the plaintiff Rs. 150/- a month. 30

5. The defendant admits the averments in paragraph 7 of the plaint.



6. Answering paragraph 8 of the plaint the defendant states that it made payments to the plaintiff until June, 1948, without any legal obligation on its part to do so, and specially denies that the refusal of the defendant to make any payments thereafter was wrongful or unlawful.

No. 3.  
Answer  
of the  
Defendant.  
5-12-49.  
—continued

7. Answering paragraphs 9 and 10 of the plaint the defendant denies that the plaintiff is legally entitled to the payment by the defendant of any sum whatsoever, or that a cause of action has accrued to the plaintiff to sue the defendant for the recovery of any sum whatsoever.

10

8. As a matter of law the defendant states that all rights and obligations of the parties under the agreement referred to in the plaint ceased when C. P. Wijeratne entered the service of the defendant in or about June, 1946, and that the agreement thereupon ceased to be effective.

Wherefore the defendant prays that the plaintiff's action be dismissed, for costs and for such other and further relief in the premises as to this Court may seem meet.

Sgd. JULIUS & CREASY,

*Proctors for Defendant.*

20

Settled by:

D. S. JAYAWICKREMA,  
*Advocate.*

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**No. 4.**

**Amended Plaint of the Plaintiff.**

IN THE DISTRICT COURT OF COLOMBO.

T. A. D. DE SILVA of Hospital Street,  
Colombo. *Plaintiff.*

No. 21772/Money.

*vs.*

HIRDRAMANI LIMITED of 65/69 Chat-  
ham Street, Fort, Colombo. *Defendant.*

30

On this 19th day of June, 1950.

The Amended Plaint of the Plaintiff abovenamed appearing by Arthur Henry Abeyratne and George Cutchdert Abeyratne his Proctors practising in partnership under the name style and firm of "Abeyratne & Abeyratne" states as follows :—

No. 4.  
Amended  
Plaint  
of the  
Plaintiff.  
19-6-50.

No. 4.  
Amended  
Plaint  
of the  
Plaintiff.  
19-6-50.  
—continued

1. The parties reside, the contract sought to be enforced was made and cause of action pleaded herein arose at Colombo within the local limits of the jurisdiction of this Court.

2. The defendant is a Company with limited liability duly incorporated under the Companies Ordinance and having its Registered Office in Colombo within the jurisdiction of this Court. The Defendant-Company was duly incorporated on the 27th of June, 1946.

3. Prior to the said incorporation, the business of the Defendant-Company was carried on by one Parmanand Tourmal under the name style and firm of "Hirdramani". 10

4. On or about the 29th day of June, 1944, the said Parmanand Tourmal on his behalf and on behalf of his heirs, executors and administrators agreed in writing with the plaintiff's *inter alia*;

(i) in consideration of the services rendered by the plaintiff and as long C. P. Wijeyeratne (who was a party to the said agreement) is employed under him to pay to the plaintiff as from the 1st day of February, 1944 monthly at the end of each and every month a sum of Rs. 150/- during the lifetime of the plaintiff. 20

(ii) in the event of the said C. P. Wijeyeratne being dismissed from service or being incapacitated by illness or otherwise or leaving the service of Hirdramani at any time or in the event of the death of the plaintiff then the payments to the plaintiff of the said sum shall immediately cease. The said agreement is herewith filed marked letter "A" and pleaded as part and parcel hereof.

5. The said Parmanand Tourmal in pursuance of the said agreement paid to the plaintiff every month the said sum of Rs. 150/- until the business of Hirdramani was covered into a limited liability Company on the said 27th of June; 1946. 30

6. Thereafter the Defendant-Company undertook the liability of Parmanand Tourmal to pay the said sum of Rs. 150/- per month to the plaintiff and continued to pay the plaintiff the said sum monthly without default.

7. The said Parmanand Tourmal died on or about 23rd of March, 1948.

8. That after the death of the said Parmanand Tourmal the Defendant-Company has wrongfully and unlawfully refused to continue the said payments to the plaintiff in terms of the said agreement and the plaintiff is entitled to the date hereof to the payment of a total sum of Rs. 2,250/-. 40

8a. The plaintiff specially pleads that in law the Defendant-Company is estopped from denying its liability to pay to the plaintiff the said monthly sum of Rs. 150/- by reason among others of the fact that the Defendant-Company unconditionally continued to pay the said sum to the plaintiff from the date of its incorporation until the death of the said Parmanand Tourmal.

No. 4.  
Amended  
Plaint  
of the  
Plaintiff.  
19-6-50.  
—continued

10 9. The plaintiff pleads that in the premises aforesaid he is legally entitled to the payment by the Defendant-Company of the sum of Rs. 2,250/- being the sum due to the plaintiff as aforesaid from the month of June, 1948, to the month of August, 1949, (inclusive) and to further payments of Rs. 150/- per mensem from the end of September onwards.

10. A cause of action has thus accrued to the plaintiff to sue the Defendant-Company for the recovery of the said sum of Rs. 2,250/- and for judgment entitling him to the monthly payment of Rs. 150/- in terms of the said agreement which sum or any part thereof the Defendant-Company has refused to pay though thereto often demanded.

Wherefore the plaintiff prays :—

- 20 (a) For judgment against the Defendant-Company for the said sum of Rs. 2,250/- together with legal interest thereof from date hereof till payment in full.
- (b) For judgment against the Defendant-Company declaring the plaintiff entitled to the monthly payment of Rs. 150/- from the month of September, 1949 onwards in terms of the agreement together with legal interest on the total sum due up to the date of decree till payment in full.
- (c) For costs of suit and
- 30 (d) for such other and further relief in the premises as to this Court shall seem meet.

ABEYRATNE & ABEYRATNE,

Sgd. .... Partner.

*Proctors for Plaintiff.*

No. 5.  
Proceedings.  
23-6-50.

**No. 5.**  
**Proceedings.**

21772/M.

23rd June, 1950.

MR. ADVOCATE JAYAWICKREME instructed by MESSRS. JULIUS & CREASY for defendants.

MR. ABEYERATNE for the plaintiff.

Mr. Abeyeratne seeks to amend the plaint, *vide* motion.

Mr. Jayawickrema consents to the amendment of the plaint being accepted.

Amendment of the plaint is accepted by consent. Amended Answer, if any on 30-6-50 before Mr. K. D. de Silva, A. D. J. Trial date is already fixed and it will stand.

10

Sgd. H. A. DE SILVA,

*D. J.*

23-6-53.

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**No. 6.**

**Amended Answer of the Defendant.**

IN THE DISTRICT COURT OF COLOMBO.

T. A. K. DE SILVA of Hospital Street, Fort,  
Colombo. *Plaintiff.*

20

No. 21771/M.

*vs.*

HIRDRAMANI LIMITED of 65/69, Chat-  
ham Street, Fort, Colombo. *Defendant.*

On this 29th day of June, 1950.

The amended answer of the defendant abovenamed appearing by Geoffery Thomas Hale, Frederick Claude Rowan, Joseph Francis Martin and Henric Theodore Perera carrying on business in partnership in Colombo under the name style and firm of Julius and Creasy and their Assistants Alexander Nereus Wiratunga, John Peter Edmund Gregory, James Arelupar Naidoo, Alexander Richard Neville de Fonseka, Behram Kaikushroo Billimoria, Lena Charlotte Fernando, Mohamed Shereoff Mohamed Shabdeen and Rex Herbert Sebastian Philips, Proctors, states as follows :—

30

1. Answering paragraph 1 of the plaint the defendant denies that a cause of action has arisen against the defendant.

No. 6.  
Amended  
Answer  
of the  
Defendant.  
29-6-50.  
--continued

2. The defendant admits the averments in paragraphs 2, 3 and 4 of the plaint.

3. The defendant admits the averments in paragraph 5 of the plaint and further states that C. P. Wijeratne entered the service of the defendant in or about June, 1946.

10 4. Answering paragraph 6 of the plaint the defendant states that under the agreement referred to the liability of Parmanand Tourmal to pay the plaintiff Rs. 150/- a month ceased when C. P. Wijeratne entered the service of the defendant in or about June, 1946, but the defendant continued to make payments to the plaintiff until June, 1948, without any legal obligation on its part to do so. The defendant specially denies that it undertook the liability of Parmanand Tourmal to pay the plaintiff Rs. 150/- a month.

5. The defendant admits the averments in paragraph 7 of the plaint.

20 6. Answering paragraph 8 of the plaint the defendant states that it made payments to the plaintiff until June, 1948, without any legal obligation on its part to do so, and specially denies that the refusal of the Defendant to make any payments thereafter was wrongful or unlawful.

7. Answering paragraphs 9 and 10 of the plaint the defendant denies that the plaintiff is legally entitled to the payment by the defendant of any sum whatsoever, or that a cause of action has accrued to the plaintiff to sue the Defendant for the recovery of any sum whatsoever.

30 7a. Answering paragraph 8a of the amended plaint the defendant states that the defendant is not estopped in law, by reason of the fact specifically averred in the said paragraph, from denying its liability to pay the plaintiff the said monthly sum of Rs. 150/-.

8. As a matter of law the defendant states that all rights and obligations of the parties under the agreement referred to in the plaint ceased when C. P. Wijeratne entered the service of the defendant in or about June, 1946, and that the agreement thereupon ceased to be effective.

No. 6.  
Amended  
Answer  
of the  
Defendant.  
29-6-50.  
—continued

Wherefore the defendant prays that the Plaintiff's action be dismissed, for costs and for such other and further relief in the premises as to this Court may seem meet.

Sgd. JULIUS & CREASY,  
*Proctors for Defendant.*

Settled by,  
D. S. JAYAWICKREMA,  
*Advocate.*

No. 7.  
Proceedings.  
13-7-50.

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**No. 7.**

**Proceedings.**

D. C. 21772/M. 13th July, 1950. 10

MR. ADVOCATE JAYAMANE with MR. ADVOCATE L. G. WEERAMANTRY for plaintiff instructed.

MR. ADVOCATE D. S. JAYAWICKREME for defendant instructed.

No time. It is 3 p.m. now. I am going on with another case which is likely to take the rest of the day.

Trial postponed to 11th September, 1950.

Sgd. K. D. DE SILVA,  
*A. D. J.*  
13-7-50. 20

No. 8.  
Proceedings.  
11-9-50.

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**No. 8.**

**Proceedings.**

D. C. 21772/M. 11th September, 1950.

MR. ADVOCATE U. A. JAYASUNDERA, K.C., with MR. ADVOCATE WEERAMATRY for the plaintiff instructed.

MR. ADVOCATE JAYAWICKREMA for the defendant instructed.

It is 3 p.m. now. I am going on with another case which will take the rest of the day.

Trial postponed to 12th October, 1950. 30

Sgd. K. D. DE SILVA,  
*A. D. J.*  
11-9-50.

**Issues Framed.**

12th October, 1950.

MR. ADVOCATE U. A. JAYASUNDERA, K.C., with MESSRS  
ADVOCATE L. G. WEERAMANTRY and O. M. DE ALWIS for  
plaintiff instructed.

MR. ADVOCATE D. S. JAYAWICKREMA for defendant in-  
structed.

10 Plaintiff and Mr. Bagawandas, Director of the Defendant-Com-  
pany, present.

Mr. Jayasundera suggests the following issues :—

1. On the facts admitted in paragraphs 2, 3, 5 and 6 of the  
amended answer, is the Defendant-Company liable to the plaintiff  
in respect of the claims, if any, arising on the agreement dated 29th  
January, 1944, marked P 1. ?

2. Did the Defendant-Company undertake to pay plaintiff the  
sum of Rs. 150/- per month mentioned in the said agreement ?

20 3. (a) Did the Defendant-Company continue unconditionally  
to pay the said sum of Rs. 150/- per month to plaintiff  
from the date of its incorporation until the death of  
Mr. Parmanand Tourmal ?

(b) If so, is the Defendant-Company estopped from denying  
its liability to plaintiff on the said agreement ?

4. If all the foregoing issues or any one of them is answered  
in plaintiff's favour what sum is due from the Defendant-Company  
to plaintiff ?

Mr. Jayawickrema suggests :

30 5. (a) Did the rights and obligations of the parties under the  
agreement P 1 cease when Wijeratne entered the ser-  
vice of the Defendant-Company in or about June 1946 ?

(b) If issue 5(a) is answered in the affirmative, did the  
agreement thereupon cease to be effective ?

6. Did the defendant make payments to the plaintiff until  
June, 1948, without any legal obligation on its part to do so ?

No 9:  
Issues  
Framed.  
—continued

7. If issue 6 is answered in the affirmative, was the defendant entitled to withhold further payment at any time?

Mr. Jayasundera suggests further issues :

8. Was Wijeratne employed by the Defendant-Company with the consent of Mr. Parmanand Tourmal?

9. If so, is the Defendant-Company liable on the agreement P 1?

I adopt issues 1 to 9.

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**No. 10.**

**Plaintiff's Evidence.**

10

No. 10.  
Plaintiff's  
Evidence.  
T. A. K. de  
Silva.  
Exami-  
nation.

Mr. Jayasundera calls :

T. A. K. DE SILVA. Affd. 49, Jeweller, Bambalapitiya.

I am the plaintiff in this case. I knew the late Mr. Parmanand Tourmal. He and a brother of his carried on the business called "Hirdramani" in Colombo Fort for many years.

Q. When did you have anything to do with Mr. Parmanand Tourmal, in what year?

A. In 1933.

I helped him to build up the jewellery department of his business from 1933. I was the leading jeweller of the firm till 1944. I introduced my brother-in-law Wijeratne to the firm prior to 1944. That is my wife's younger brother. He also worked as a jeweller for Hirdramani. He worked under me in the employ of Mr. Tourmal. I was really managing the manufacture of jewellery in the Jewellery Department of Hirdramani. I took orders and quoted the prices. I had nothing to do with the sale of this jewellery. I did not work at any time as a salesman.

20

The brother of Mr. Tourmal left the firm and established himself in a separate business called the Eastern Silk Stores in 1942 or 1943. In 1944 Mr. Tourmal was the sole proprietor of the business Hirdramani. I produce marked P 2 a true copy of the certificate of registration of the business of Hirdramani. The business was registered on 21-8-42.

30

In 1944 I entered into the agreement P 1 with Mr. Tourmal. In consideration of the services that I had rendered, Mr. Tourmal promised to make the payments mentioned in the agreement subject



to the conditions mentioned therein. I left the service of Hirdramani as from 1st February, 1944. My brother-in-law Wijeratne continued to be in charge of the business after that. From February I received every month the sum of Rs. 150/- mentioned in the agreement from Mr. Tourmal. It was in the middle of 1946 that I came to know that this business had been converted into a limited liability Company. Although I severed connections as the leading jeweller of this business, I used to go to the shop frequently. After I came to know that the business had been converted into a limited liability Company I spoke to Mr. Tourmal. I spoke to him about the payments that were being made to me. I asked him whether there would be any change in the payments made to me according to the agreement after the business was incorporated into a limited liability Company. He said he was the Managing Director and Chairman of the Board of Directors, and that there would be no change, and that the Company would pay. The Company continued to pay me according to the agreement. Wijeratne continued to work in Hirdramani Ltd. He is working there up to date. I spoke to Mr. Tourmal about my payments on the agreement in June or July, 1946. By that time Mr. Tourmal was the Managing Director of the Defendant-Company. Mr. Tourmal was always in the place of business till he died. He was not one of the sleeping partners, he was always in the shop controlling the business. Until his death he continued to be the Managing Director of the Defendant-Company. Wijeratne, my brother-in-law, worked in the same premises as jeweller.

10

20

The cheques that I received after the Company was incorporated were all Company cheques, and with covering letters from the Company. I did not get a covering letter always. I frequently go to the shop at the end of the month and I get a cheque. On the occasions I did not go I received a cheque with a covering letter. I received from the Defendant-Company letter dated 9th April, 1948, (P 3). Mr. Tourmal died about March, 1948, i.e. about a month before I received this letter. In that letter they state that they are continuing payment without my legal obligation to do so. It enclosed a cheque for Rs. 150/-. I did not reply to that letter. On 30th April, 1948 I received another letter from the defendant-Company, which I produce marked P 4. I did not reply to that letter also.

30

40

On 31st May, 1948, I received letter P 5. To that I replied by my letter of 28-6-48 P 6.

(Original of P 6 handed over to plaintiff's Counsel by defendant's Counsel.)

Agreement P 1 states that I am to be paid this amount monthly during my lifetime. To P 6 I received their reply P 7 dated 29th

No. 10.  
Plaintiff's  
Evidence.  
T. A. K de  
Silva.  
Exami-  
nation.  
—continued

No 10  
Plaintiff's  
Evidence.  
T. A. K de  
Silva.  
Exami-  
nation.  
—continued

June, 1948. I did not accept the position set out in P 7 and I therefore filed this action. Until after the death of Mr. Parmanand Tourmal I was not told by Mr. Parmanand or any other member of the Company that the payment was subject to the condition that the Company was not under any legal obligation to pay this amount.

I produce marked P 8 a true copy of the memorandum of Association of the defendant-Company. I also produce marked P 9 a true copy of the Articles of Association of the Defendant-Company.

When Hirdramani was an unlimited Company, business was carried on at No. 65, Chatham Street. After the registration of the business as a limited liability Company it was carried on in the same premises. As far as I am concerned the only change in the business was its name by the addition of the word "Limited".

10

(To Court :

Q. When the business was formed into a limited liability Company if you were informed by the Company that they were not liable to pay this amount on the agreement, what would you have done?

A. I would have discussed matters with Mr. Tourmal and entered into a fresh agreement.)

20

T. A. K de  
Silva.  
Cross-  
Exami-  
nation.

*Cross-examined.*

I would have got a fresh agreement from Mr. Parmanand Tourmal.

Q. Because your original agreement was with him? Yes.

After I retired from the service of Hirdramani on 1st February, 1944, I had a small business concern at the Eastern Silk Store. I had a small jewellery business there. The business of Eastern Silk Store was carried on by Mr. Tourmal's brother. According to the agreement I was free to work anywhere. After I left Hirdramani I worked in the Jewellery Department of the Eastern Silk Store. Even at the time the Company was formed I was working at the Eastern Silk Stores.

30

After the Company was formed I spoke to Mr. Tourmal. He said that he was the Managing Director of the Defendant-Company and that there would not be any change in regard to the payment on the agreement, and that he would continue to pay me. That was a very important matter so far as I was concerned. I had no misgivings in my mind that he would continue to pay me.

Q. Because he told you so? Yes.

I was written to by the Defendant-Company on 9th April, 1948, soon after Mr. Tourmal's death.

No. 10.  
Plaintiff's  
Evidence.  
T. A. K. de  
Silva.  
Cross-  
Exami-  
nation.  
—continued

Q. In which the Defendant-Company stated specifically that they would make the payments and would continue to make the payments without any liability on their part to do so? Yes.

I accepted the cheque that they sent with their first letter, but I did not read their first letter because I cannot read English. I cashed that cheque.

Q. That was the first cheque that was sent to you with a letter?

10 A. Even on previous occasions when I failed to go to the shop a cheque was sent to me with a covering letter. That happened very seldom.

I did not reply to that first letter which I received from the Defendant-Company. At the end of April I received another letter, which was a little longer than the first one, in which reference was made to the earlier letter, and in which I was told that the future payments would be made subject to the conditions contained in the previous letter.

20 Q. And that the Company presumed that you have accepted those terms contained in the previous letter? Yes.

I did not reply to that letter, but after I received that letter I went and spoke to Mr. Bagawandas, the son of Mr. Parmanand Tourmal, who was a Director of the Company. He is the Managing Director of the Defendant-Company now. I told him that according to the agreement the payment to me cannot be stopped and that he was trying to do an injustice to me by including a condition in the letter in regard to future payments, and that I expect to receive payment. I spoke to him the same day that I received the second letter. He told me that if I accepted their condition they will continue to pay me as long as it pleased them, and asked me to send a reply in writing. I said that I would not reply his letter in writing, and asked him to pay as he liked.

30

I received another letter on 31st May, 1948, once again referring to the condition.

Q. And you took nearly one month to reply to that? Yes.

I consulted my lawyers. I told them the whole story from beginning to end. After that I wrote the letter P 6.

No. 10.  
Plaintiff's  
Evidence.  
T. A. K de  
Silva.  
Cross-  
Exami-  
nation.  
—continued

Q. In the last para of P 6 you were uncertain as to who ought to pay you. You stated there "I feel that the Company or in the alternative the estate of the late Mr. Parmanand Tourmal is liable to pay me the said amount throughout my life". Why did you say that?

A. I expected either the Company or the estate of Mr. Parmanand to pay me according to the agreement, because Mr. Parmanand had told me so.

*To Court :*

Q. What did Mr. Tourmal tell you?

10

A. He said the Company would continue to pay.

*Cross-examined :—(contd.)*

Q. Why did you not mention the conversation that you had with Mr. Tourmal in this letter P 6?

A. I did not mention it at that time.

I deny that I thought of it only now.

Q. You said that Mr. Tourmal told you that the Company would pay? Yes.

Q. Then why did you say in P 6 that the Company or in the alternative the estate of Mr. Tourmal should pay?

20

A. Because Mr. Bagawandas told me that the Company was not bound to pay.

Q. But you omitted to mention what Mr. Tourmal told you in the letter? Yes.

Q. And your position now is that it was because of what Mr. Tourmal told you that you did not come to any arrangement about this matter earlier? Yes.

My lawyers had further correspondence with the defendant-Company in regard to this matter.

Q. You are not producing any letter which contains what Mr. Tourmal told you, i.e. that the Company would pay?

30

A. I did not mention that because I had nothing in writing to that effect.

I am carrying on business now. I get an income from that business. I have my own place of business at Hospital Street. I also have my business at Eastern Silk Store, but I have opened another small curio shop at Hospital Street. I started that business in Hospital Street about 1½ years ago.

No 10.  
Plaintiff's  
Evidence.  
T. A. K. de  
Silva.  
Cross-  
Exami-  
nation.  
—continued

*Re-examined.*

10 Q. After your conversation with Tourmal about payment shortly after the incorporation, the cheques that you received, were they cheques issued by the Company or Mr. Tourmal's personal cheques?

T. A. K. de  
Silva.  
Re-Exami-  
nation.

A. Cheques of the Defendant-Company.

Sgd. K. D. DE SILVA,  
A. D. J.

Plaintiff's case closed reading in evidence P 1 to P 9.

Sgd. K. D. DE SILVA,  
A. D. J.

12-10-50.

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**No. 11.**

**Addresses to Court.**

No 11.  
Addresses to  
Court.

20 Mr. Jayawickrema states that he is not calling any witnesses. He addresses Court: No case has been made out for the defendant to answer. The plaintiff's case must be dismissed. One of the most important facts on which the plaintiff's case is based is the statement that Mr. Tourmal is alleged to have made to the plaintiff. It is on that conversation and on that conversation alone that an estoppel can be sought to be made out against the Company, because at that time Mr. Tourmal was the Managing Director, and the plaintiff's case is that soon after the incorporation he went and spoke to Mr. Tourmal, and he has stated what Mr. Tourmal had told him.

30 On the plain construction of the agreement, issues 5 (a) and 5 (b) must be answered in the affirmative and in the defendant's favour, because under clause C of the agreement the obligation to pay on the part of Mr. Tourmal ceased when Wijeratne entered into the service of the Defendant-Company. When he entered into the employment of the Defendant-Company he ceased to be employed by Hirdramani. The Company is a distinct and different person from the individuals who form the Company, and a Company may consist of shareholders who are only members of the family. It must be distinguished from the individuals who form it. When Hirdra-

No 11.  
Addresses to  
Court.  
—continued

mani Ltd., commenced to carry on business, Wijeratne ceased to be in the employ of Mr. Tourmal, although it may be granted that he was the chief person of the jewellery branch of the Company. The liability of Hirdramani was only so long as Wijeratne was employed by them. Here is a contract by which Hirdramani has contracted to pay Silva a certain amount during his lifetime. He by his own act has consented to put an end to an obligation which he had entered into by contract. Therefore it is he who is liable. *38 Chancery Division 597 at pages 603 and 604.* If any liability is to be attached any person by reason of the termination of the contract, i.e. by Wijeratne ceasing to be employed by Hirdramanis, the incidents of that liability must be considered in reference to Hirdramani, and not in reference to any other business.

10

The Company can be made liable only on the basis of an estoppel. *Odgers on Pleadings and Practice (13th Ed.) page 178.* All the facts on which estoppel is relied on must be set out. In this case the only fact relied on for estoppel is the payment made by the Defendant-Company and nothing else. *Carr v. North Western Railway Co. (1875) Law Reports 10 Common Pleas, page 307, at page 316.* What are the facts on which the estoppel is based? The facts are not that Mr. Tourmal said this, but the Company continued to pay. If the Court rejects the evidence of the plaintiff, then the fact that the Company made payment is nothing more than a monthly payment which the Company paid from time to time. There was no representation that the Company would continue to pay. It was a monthly payment made from time to time.

20

*To Court :*

Q. Was it unfair for him to assume that this payment was made according to the agreement?

A. What did he assume? The representation that it makes must be of a certain nature. There should be no ambiguity about that representation.

30

*Amir Ally pages 873 and 874. Amir Ally (9th Ed.) page 897.* There is no question of the Defendant-Company having undertaken to pay. The agreement has been signed by Silva, Wijeratne and Tourmal. There is no novation of the contract in this case. *Cheshire & Fiefoot on Contracts (1945 Ed.) pages 339 and 343.* It is clear from the correspondence that there is no novation. From the 29th of June, 1948, the Letter P 7 clearly shows that the plaintiff is not sure from whom he should receive this amount, whether it is from the Company or from the estate of Parmanand Tourmal. In this case one party is not sure with whom he contracted.

40

*Lee on Roman Dutch Law (4th Ed.) at page 246.* Novation has not been pleaded. It is good law that an estoppel cannot lie against a Company unless the matter which is sought to be raised as an estoppel is one which falls within the objects of the Company. There must be strong evidence to show that the Company assumed liability. First of all, did the Company undertake liability? In order to undertake liability under the agreement of Hirdramani entered into by Tourmal, there must be a novation of the contract. The object of the Company was not to purchase. Tourmal was only a Director of the Company. There must be an undertaking that this liability of Tourmal was taken over. In this case the essential elements of an estoppel against a Company does not arise. The fundamental point in the evidence on which the whole case is based is the statement made by Tourmal. That such a statement was made by Tourmal to plaintiff must be rejected. If such a statement had been made, how is it that such an important matter has not been referred to in his (plaintiff's) own letters. He has accepted in the position for three months that the Company was under no legal obligation to pay this amount. No case of estoppel has been made out. It has not been proved that the Company undertook the liability of Tourmal and that the Company is therefore liable to continue to pay this amount to the plaintiff.

No. 11.  
Addresses to  
Court.  
—continued

On the question of estoppel, P 6 is most important. Estoppel must be against a specific person. That is the proper stage that the plaintiff should have said it. The last para in letter P 6 shows that the plaintiff in his own mind did not know who was liable, the Defendant-Company or the estate of Mr. Parmanand Tourmal. It is the effect on the plaintiff's mind that is important. He says that Tourmal said that the Company would pay. On the plaintiff's evidence the Court cannot hold that there is an estoppel against the Defendant-Company. Suppose on the agreement, on the evidence and on the documents it is found that the Company is not liable in law, then the fact that we have shown in our books this amount as a liability does not help the plaintiff to raise an estoppel against the Company.

The plaintiff's evidence is clear that Tourmal told him that the Company will pay, but that evidence is contradicted by his letter P 6. There must be certainty for an estoppel to arise.

*Mr. Jayasundera addresses Court :*

The estoppel is not based on any statement made by Mr. Tourmal. It is based on the unconditional payments made by the Company after the Company was formed. That payment is referable only to the contract.

No. 11.  
Addresses to  
Court.  
—continued

Issue 1—In para 2 of the amended answer they admit all the averments in paras 2, 3 and 4 of the amended plaint. Para 2 in the amended answer is an unequivocal admission that Hirdramani Ltd. succeeded to the business of Hirdramani. That may be by way of purchase, gift or surrender, or whatever it may be. It is admitted that the Defendant-Company succeeded to the business of Hirdramani. Hirdramani before incorporation and after the incorporation are two different things, but the facts is that they took over the business, i.e. the assets and liabilities. The books are not produced. They could have proved by producing their books that they had not taken over the liability to pay. They could have proved that it was paid out of some charity account, which is not a legal obligation. If on the agreement a legal liability is created, they took over that liability as well. Para 3 of the answer admits para 5 of the plaint. They took over Wijeratne only in terms of the contract. The contract states that Wijeratne shall not work for any other person without the consent of Mr. Tourmal. That left room for Wijeratne to work for anybody with Mr. Tourmal's consent. The main fact on which I reply is the admission contained in para 3 of the answer in reply to para 5 of the plaint, that they took over the business of Hirdramani. It must be proved that they took over both assets and liabilities. On their admission it must be presumed that they took over the assets and liabilities of Hirdramani. The aggregate business of Hirdramani which was taken over by the Defendant-Company would include all the assets and liabilities. The business cannot be converted into a Limited Liability Company. There was an individual doing business, and that is the business of buying and selling silk and buying and selling jewellery. He was succeeded by a Limited Liability Company. Their business is the same. The business which was earlier carried on by a single person is now carried on by a Limited Liability Company. It means that all the stock-in-trade or assets, and their liabilities were taken over by the Limited Liability Company. The management changed but the business remained the same. On the admitted facts the plaintiff is entitled to judgment. The defendant called no evidence today to prove what they took over.

10

20

30

(Mr. Jayawickreme refers to para 4 of the amended answer in regard to the taking over of the liability of Tourmal.)

The evidence of the plaintiff is that the Company undertook to pay him. On that point plaintiff's evidence stands uncontradicted. The plaintiff says that the Managing Director undertook to pay. As to whether he undertook to pay or not would be shown in the books. The books of the Company would prove the payment. The undertaking is there, but it will not be on record. If that undertaking was not acted upon by the Company, that is a matter that would be reflected in the books of the Company. They say that the payment was not made as a legal obligation. That would mean that it was

40



paid as charity. If so, it must be shown in the Charity Account or in Mr. Parmanand's personal account. I admit that for issue 2 to be answered in my favour I must prove that Mr. Parmanand gave this undertaking as Managing Director. On that point there is the plaintiff's evidence. That evidence is sufficient if the Court accepts that evidence. The payment by the Defendant-Company after the alleged conversation is bound to throw light as to whether they acted on such undertaking or not.

No. 11.  
Addresses to  
Court.

—continued—

10 It would have been better if the plaintiff referred in his letter P 6 to the alleged promise, but this letter gives the inference from facts. In P 6 the plaintiff had stated that the Company or in the alternative the estate of Mr. Parmanand Tourmal should pay, because in the agreement there is reference to the heirs, executors and administrators. Unless it is made unassignable, it can be assigned. If the Company became the assignee of this business, the document need not say that the assignee is bound. If the assignee is to be excluded from liability to pay them it must be so stated. This contract can be assigned. Wijeratne's consent is necessary for the assignment, and Wijeratne's consent is there, because he consented to work. 7 Halsbury (Hailsham Edition) page 314, paras 20 442 and 443. Novation can take place in the circumstances in which these circumstances have taken place. By the express undertaking of the Managing Director to pay, a novation was created. Even if there was no such undertaking, by the common consent of all three parties the novation was created. Hirdramani Ltd. took over Wijeratne, and Wijeratne without a word went and worked there. Wijeratne worked under Tourmal's own eyes and the Company continued to pay. I did not plead novation. It is not necessary because it is besides the point. Issues 3.—The defendant 30 lulled the plaintiff into a sense of false security by their conduct. Spencer Bower Estoppel by Representation, page 140, para 162. The representation in this case is payment, and that is the estoppel. Even silence would raise an estoppel. In this case there is more than silence. When they began to pay they should have told me why they were paying, because payment can only be referable to the contract. As a result of their failure I lost the opportunity of entering into a new agreement with the only person with whom I could have entered into such new agreement. That lulled me into a sense of security. Suppose Tourmal said that he was entitled to 40 convert this Company into a Limited Liability Company and that the Company is not liable to pay, I would have taken up the position that he could not do that. I would have had the opportunity of fighting out that position with Tourmal. The opportunity I had of clarifying my position at that stage was lost as a result of the defendant's conduct. I have certain rights that are not denied. I had certain rights against Tourmal. Tourmal had no right to withhold payment. When Wijeratne ceased to be his employee the circum-

No. 11.  
Addresses to  
Court.  
—continued

tances were such that Mr. Tourmal could not have denied that he was employing or that his Company was employing Wijeratne. The relations continued as master and servant although Tourmal converted his business, as they say, into a Company. If Tourmal gave up the business then the plaintiff would not be entitled to payment. But the position is different here. Wijeratne continued to work. The fact that Wijeratne took employment under Hirdramani Ltd., is what the defendant says now that destroys my right to receive payment. That is a plea which Tourmal would not have taken against me during his lifetime, because Tourmal was obviously bound, and payment was made with the knowledge of Tourmal. If any difficulties arose at that stage when the Company was formed, Tourmal would have made some adjustment. He would never have left me high and dry.

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The agreement does not contemplate that it was to terminate on the death of Tourmal. The agreement does not say so. According to the agreement it will not terminate with the death of Tourmal, but with the death of plaintiff. It is as a result of Tourmal's death that they are now seeking to terminate the contract.

*To Court :*

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Q. How can you take service under him after his death ?

A. When he provided in the agreement "heirs, executors and administrators" he contemplated service under anybody who succeeded him in the business.

Tourmal did not contemplate that on his death the agreement was to terminate, but on the other hand it was to continue.

If the business ceased then the position would be different. If the business ceased then the occasion for Wijeratne to be employed also would have ceased. Whether it was a charitable payment made by the Company after the Company was formed could be found out by another circumstance. Would Wijeratne have contributed towards this charity. The Court would not assume that Wijeratne would have given Rs. 75/- as charity for the sake of his brother-in-law. For the purpose of an estoppel I should prove that I lost the opportunity of clarifying my position and also to adjust matters to my advantage. The facts that are now before Court would lead one to the conclusion that matters could have been adjusted to my advantage, because the parties then would have been the plaintiff and Mr. Tourmal. During the lifetime of Mr. Tourmal he paid. The contract is one of such a nature that he out of consideration for past services was making some provision for an employee. In this case the Court can reasonably come to the conclusion that Tourmal made some provision for this man. That is sufficient. There is real moral certainty. The moral certainty that he would have got relief is sufficient. The facts indicate that there was a very high degree of possibility that Tourmal would have

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made some provision for this man. If anybody knew that Tourmal would have made some provision, the son knew it. Knowing that he waited till the father died.

No. 11.  
Addresses to  
Court.  
—continued

Laws of England, Halsbury (Hailsham Ed.) Vol. 13, page 479, para 547. If Tourmal took up the position that Wijeratne had taken employment elsewhere and that Hirdramani ceased and it was now a Limited Liability Company, I would have established that both those were acts of his, and that view is supported by the fact that payments have been made.

10 Re my learned friends submission that an estoppel cannot be pleaded against the Company unless there is any undertaking in the Articles of Association.—P 8 para 3A gives power to Defendant-Company to undertake this liability. P 9 shows that the shareholders were members of the family. It was a private Company. At page 3 of P 9, para 3, shows that the father, mother and children were the Directors. All interests were concentrated within the family. The Directors of the Company are Life-Directors. The plaintiff should succeed on all the issues in the case. The admitted facts entitles the plaintiff to claim relief.

20 Re para 4 of amended answer: Denial is not proof. They have denied that they have taken over this liability. There is no *bona fides* in that statement, because they have taken over the business. There is no reason why the plaintiff's evidence should be rejected when he says that Tourmal on behalf of the Company undertook this liability. Issue No. 2 rests on that evidence of the plaintiff. His statement is very strongly corroborated by the failure on the part of the defendant to produce their books and show that it was only a payment by way of charity. What the plaintiff said was that the Company undertook to pay. If the books show that the  
30 Company did not pay, then the plaintiff stands contradicted substantially, and they would have been entitled to ask the Court to reject his evidence. The books would show if it was a payment made on behalf of Mr. Tourmal. The conduct of the defendant supports the plaintiff's statement. This payment might have been passed by the Board of Directors and it will be in the minutes. The suppression of the documents is strong corroboration of the plaintiff's evidence. This payment is only referable to this agreement. There is no other matter to which the Defendant-Company referred when making payment. They do not say that it is paid on any other account.  
40 The reasonable inference is that it is only referable to the contract.

Mr. Jayawickrema cites Solomon v. Solomon (1897) Appeal Cases 22. Amir Ally (9th Edition) passage at page 897.

Judgment on 26-10-50.

Sgd. K. D. DE SILVA,  
A. D. J.  
12-10-50.

**No. 12.**

**Judgment of the District Court.**

JUDGMENT.

3rd November, 1950.

One Parmanand Tourmal was carrying on business at No. 65/69, Chatham Street, Colombo, under the name and style of "Hirdramani", and the plaintiff was employed as his leading jewellery maker from the year 1933. In or about 1944, the plaintiff desired to retire from the firm, probably to make way for his brother-in-law Wijeratne whom he had introduced into that firm as his assistant sometime earlier. For this purpose, the agreement P 1 dated January 29, 1944, was entered into between Parmanand on the one hand and the plaintiff and Wijeratne on the other. This agreement which consists of several clauses provided, *inter alia*, that—

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(a) the plaintiff shall retire with effect from February 1, 1944.

(b) Wijeratne shall serve under Tourmal as leading jewellery maker from the date on an agreed remuneration, and that he shall devote his whole time to that work and that he shall not work for any other party without first obtaining Parmanand's consent,

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(c) in consideration of his past services Parmanand shall pay the plaintiff during his life at the rate of Rs. 150/- a month from February 1, 1944, as long as Wijeratne is employed under Parmanand,

(d) towards such payment Wijeratne shall contribute Rs. 75/- a month,

(e) the plaintiff shall be at liberty to carry on his usual business of jewellery maker,

(f) in the event of Wijeratne dying or being dismissed from service or being incapacitated by illness or otherwise or leaving the service of Hirdramani or on the death of the plaintiff the payment of Rs. 150/- shall cease, and

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(g) it shall be lawful for Parmanand to dismiss Wijeratne under certain circumstances, and in that event too the agreement shall cease and be of no avail.

In terms of this agreement, Parmanand paid the plaintiff at the rate of Rs. 150/- per month. On June 27, 1946 the business of "Hirdramani" the sole proprietor of which was Parmanand, was floated into a private Limited Liability Company, i.e. the Defendant-Company, the only shareholders of which being Parmanand his wife and children.

No. 12.  
Judgment  
of the  
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3-11-50.  
—continued

10 Parmanand because the Managing Director of this Company and continued to be so until his death, which took place on March 23, 1948. Even after the business was converted into a Limited Liability Company, the plaintiff was paid regularly at the rate of Rs. 150/- a month. But from the time of the formation of the Company these payments were made by the Company and not by Parmanand. But shortly after Parmanand's death the Defendant-Company in forwarding a cheque for Rs. 150/-, being the amount due for March, 1948, wrote to plaintiff the letter P 3 of April 9, 1948, which reads:—

" We enclose herewith a Cheque for Rs. 150/- being the amount paid to you monthly by the late Mr. T. Parmanand.

20 As you are aware of, Mr. Parmanand died recently and before his death our Company was formed.

We are therefore continuing this payment without any obligation or binding on our part".

The payments for April and May were also made subject to the same conditions—*Vide* P 4 and P 5. Thereupon, on June 28, 1948, the plaintiff addressed the letter P 6 to the Defendant-Company acknowledging receipt of P 3, P 4 and P 5 and stated therein as follows:—

30 " However I find it difficult to understand why you state that these payments are being made without any obligation or binding on your part and I shall be glad if you will explain your position clearly for my future guidance.

I have not in any way accepted this position of yours although you state that I have done so.

I feel that the Company or in the alternative the estate of the late Mr. Parmanand Tourmal is liable to continue the payment of the said sum throughout my life."

40 Thereafter no payments have been made by the Defendant-Company to the plaintiff. It is necessary to observe that on the formation of the Defendant-Company Wijeratne became its leading jewellery maker and has continued to be so employed up to date.

No. 12.  
Judgment  
of the  
District  
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3-11-50.  
—continued

In this case the plaintiff seeks to recover from the Defendant-Company a sum of Rs. 2,250/- being the arrears due up to date of action, and he also prays for a declaration that the Defendant-Company is liable to pay him at the rate of Rs. 150/- a month in terms of the agreement.

The plaintiff's position is that after Parmanand's business was floated into a Company, the defendant undertook the liability of Parmanand to make these monthly payments to him and it continued to pay the same until the death of Parmanand. He also pleads that by reason of the fact that the Defendant-Company unconditionally continued to pay these amounts, it is now estopped from denying its liability. 10

The Defendant-Company denies any such liability. While admitting that it made these payments from June, 1946, till June, 1948, it is averred that those payments were made without any legal obligation to do so. As a matter of law the Defendant-Company pleaded that the rights and obligations of parties under agreement P 1 ceased when Wijeratne entered the service of the Defendant-Company and that the agreement thereupon ceased to be effective. This plea is obviously set up with reference to clause C of the agreement which reads:—"In consideration of the services rendered as aforesaid by Silva and as long as Wijeratne is employed under Parmanand he Mr. Parmanand shall as from 1st February, 1944 pay to Silva monthly at the end of each and every month a sum of Rs. 150/- during the life time of Silva". 20

The learned Counsel for the plaintiff contended that on the facts admitted in paragraphs 2, 3, 5 and 6 of the amended answer the plaintiff was entitled to judgment. I cannot agree with that submission. In para 6 of the amended answer it is specially stated that the payments were made by the Company without any legal obligation to do so. 30

Issue 2 refers to an undertaking given by the Defendant-Company to pay plaintiff the sum of Rs. 150/- per month mentioned in the agreement P 1. The evidence of the plaintiff on this point reads:—

"After I came to know that the business had been converted into a Limited Liability Company I spoke to Mr. Tourmal. I spoke to him about the payments that were being made to me. I asked him whether there would be any change in the payments made to me according to the agreement after the business was incorporated into a Limited Liability Company. He said that he was the Managing Director and that there would be no change, and that the Company would pay." 40

The Defendant-Company has not adduced any evidence to contradict the plaintiff's testimony on this point. But the Counsel for the defendant submits that the plaintiff's evidence on this point is not true. If Parmanand did in fact give any such undertaking, it is argued that the plaintiff would have referred to it in his letter P 6. If any such reference was made in that letter it certainly would have strengthened the plaintiff's evidence on this point. But, on the other hand, it cannot be said that if the plaintiff in fact questioned Parmanand about his position under the Company, that it is strange conduct on his part. It is in evidence that the plaintiff was in the habit of going to the defendant's shop even after he retired from the firm of Hirdramani. What is more natural than that on one of those occasions he should inquire from the Managing Director as to what his position would be under the new dispensation? The fact that payments were continued after the formation of the Company supports the plaintiff's story that Parmanand as Managing Director gave him an undertaking that the payment to him would be continued by the Company. If no such undertaking was given at any time, why did the Company pay? The Company's account books and minute books would show the nature of these payments. But those books have not been produced. Is it unfair to presume that they are not forthcoming because those books would not support the defendant's present position that the payments were made without any legal obligation to do so? If these payments were made "ex gratia", why didn't the Company inform the plaintiff accordingly before Parmanand died? That position was taken up after Parmanand's death probably because Parmanand would not have supported it. It is true that the firm of "Hirdramani" is different from "Hirdramani Ltd" according to law. But in reality it is the same business. That was probably the reason why the Defendant-Company undertook the liability of Parmanand to pay the plaintiff. Such liability the Defendant-Company was entitled to take over in terms of Article 3 (j) of the Memorandum of Association (P 8). I accept the plaintiff's statement that Parmanand as Managing Director of the Defendant-Company undertook to make the payments due to plaintiff under the agreement P 1. Such an undertaking would in effect amount to a novation of the original contract by the substitution of the Defendant-Company as the new debtor in place of Parmanand the original debtor. The fact that in the plaint a novation is not pleaded in so many words does not affect the legal position. But it is necessary to consider whether the other party to the agreement P 1 namely, Wijeratne, was a consenting party to the novation. According to the agreement itself, Wijeratne too had to contribute Rs. 75/- to Parmanand to enable the latter to pay Rs. 150/- to plaintiff. The payment to the plaintiff, as I observed earlier, was regularly made. It is not suggested that Wijeratne at any time refused to give his contribution. If any such objection was

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raised by him, the Defendant-Company should be in a position to prove it by both oral and documentary evidence. No such proof has been adduced. Therefore it is legitimate to presume that Wijeratne too agreed to the novation. Once the novation took place Parmanand ceased to be the debtor. But the Counsel for the defendant submits that the contents of the letter P 6 is inconsistent with novation. He relies on the words "I feel that the Company or in the alternative the estate of the late Mr. Parmanand Tourmal is liable to continue the payment of the said sum throughout my life", appearing in that letter to negative the theory of novation. It is very likely that here when he spoke of "the estate of the late Mr. Parmanand Tourmal" the plaintiff referred more to a moral obligation rather than to a legal one.

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Another question which comes up for consideration at this stage is as to whether the plaintiff's rights under the agreement P 1 became extinguished with the death of Parmanand or not. The Counsel for the plaintiff argues that the plaintiff's rights survive even after Parmanand's death, because in the agreement it is stated that the term "Parmanand" "shall mean and include the said Parmanand Tourmal his heirs, executors and administrators". So that, it was not contemplated by the parties that the agreement was to cease to be operative on the death of Parmanand. That the agreement was to continue to be effective even after his death is also to be gathered from that fact that clause (f) provided, *inter alia*, that in the event of Wijeratne leaving the services of "Hirdramani" the payments to plaintiff were to cease. It is significant that the reference here is to "Hirdramani", that is the business, and not to Parmanand. Of course, but for the novation if after the death of Parmanand his heirs, executors and administrators gave up the business, the agreement would be at an end. But as I hold that there was a novation, the plaintiff would be entitled to payment from the Defendant-Company as long as Wijeratne is employed in the service of the Defendant-Company.

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It is also argued by the plaintiff's Counsel that the Defendant-Company is estopped from denying their liability to pay the plaintiff by reason of the fact that the Defendant-Company continued to make the payments even after Parmanand's business was formed into a Company. By reason of those payments it is suggested that the plaintiff was lulled into a false sense of security. In other words, the conduct of the defendant in making those payments led the plaintiff into the belief that those payments would be continued by the defendant in terms of the agreement. The plaintiff states that if the Defendant-Company informed him that they were not going to pay, he would have taken the necessary steps to enter into a fresh agreement with Parmanand to safeguard his position. Regarding estoppel, it is stated in 7 Halsbury (Hailsham Edition) at page 479, para 547, as follows:—

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“ It is further necessary to estoppel by representation that in acting upon it the party to whom it was made should have altered his position to his prejudice. A representation made to a person after he has altered his position cannot give rise to an estoppel, though if made earlier, and acted on, it might have done so. But it is a sufficient alteration of position if he is induced by the representation to take no step to protect himself, or to retrieve his position until, owing to the insolvency of some person against whom he has a remedy, or for other reason, it is too late.”

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3-11-50.  
—continued

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In this case, if before the death of Parmanand the Defendant-Company ceased to make the payments, the plaintiff had every opportunity of arriving at a satisfactory adjustment of the matter with Parmanand. But the defendant continued to make the payments and almost immediately after the death of the one and only person with whom the plaintiff could have arrived at a settlement, he is told that he has no legal right to claim those payments. That was far too late from the point of view of the plaintiff. It cannot be said that the representation made by the defendant by reason of those continued payments was uncertain. Those payments can have no reference to anything other than the claim of the plaintiff under the agreement P 1. Therefore I hold in favour of the plaintiff on the plea of estoppel.

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The plaintiff is entitled to succeed. The answers to the issues are as follows :—

- Issue 1. — No.
- „ 2. — Yes.
- „ 3 (a) — Yes.
- „ 3 (b) — Yes.
- „ 4. — Rs. 2,250/-.
- „ 5 (a) — No.
- „ 5 (b) — No.
- „ 6. — No.
- „ 7. — Does not arise.
- „ 8. — Yes.
- „ 9. — Yes.

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No. 12.  
Judgment  
of the  
District  
Court.  
3-11-50.  
—continued

Accordingly, I enter judgment for plaintiff as prayed for with costs.

Sgd. K. D. DE SILVA,  
A. D. J.

3rd November, 1950.

Judgment delivered in open Court in the presence of:—

Mr. Abeyratne and Mr. Senanayake of Julius & Creasy.

Sgd. K. D. DE SILVA,  
A. D. J.  
3-11-50.

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No. 13.  
Decree  
of the  
District  
Court  
3-11-50.

**No. 13.**

**Decree of the District Court.**

DECREE.

IN THE DISTRICT COURT OF COLOMBO.

No. 21772/M.

T. A. DE SILVA of Hospital Street,  
Colombo. *Plaintiff.*

*against*

HIRDRAMANI LIMITED of 65/69,  
Chatham Street, Fort, Colombo.

*Defendant.*

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This action coming on for final disposal before K. D. de Silva, Esquire, Additional District Judge, Colombo on the 3rd day of November, 1950, in the presence of Proctors on the part of the plaintiff and of Proctors, on the part of the defendant, it is ordered and decreed that the defendant do pay to the plaintiff the sum of Rs. 2,250/- together with legal interest thereon from 14-9-49 till payment in full.

It is further ordered that the defendant do pay to the plaintiff Rs. 150/- from the month of September, 1949, onwards in terms of agreement together with legal interest on the total sum due, up to date hereof, till payment in full and costs of suit.

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Sgd. H. A. DE SILVA,  
D. J.

The 3rd day of November, 1950.

**No. 14.****Petition of Appeal to the Supreme Court.**

IN THE DISTRICT COURT OF COLOMBO.

No. 14.  
Petition of  
Appeal  
to the  
Supreme  
Court.  
10-11-50.T. A. K. DE SILVA of Hospital Street,  
Fort, Colombo. *Plaintiff,*

vs.

HIRDRAMANI LIMITED of 65/69,  
Chatham Street, Fort, Colombo.  
*Defendant.*10 D. C. Colombo  
No. 21772/M.HIRDRAMANI LIMITED of 65/69,  
Chatham Street, Fort, Colombo.  
*Defendant-Appellant.*

vs.

T. A. K. DE SILVA of Hospital Street,  
Fort, Colombo. *Plaintiff-Respondent.**To*THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER  
JUDGES OF THE HONOURABLE THE SUPREME COURT OF THE  
ISLAND OF CEYLON.

20 On this 10th day of November, 1950.

The Petition of Appeal of the Defendant-Appellant abovenamed appearing by Geoffrey Thomas Hale, Frederick Claude Rowan, Joseph Francis Martyn and Henric Theodore Perera carrying on business in partnership in Colombo under the name, style and firm of Julius and Creasy and their Assistants Alexander Nereus Wiratunga, John Peter Edmund Gregory, James Arelupar Naidoo, Alexander Richard Neville de Fonseka, Behram Kaikhushroo Billimoria, Lena Charlotte Fernando, Mohamed Shereef Mohamed Shabdeen and Rex Herbert Sebastian Phillips, Proctors, states as follows :—

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1. The Plaintiff-Respondent sued the Defendant-Appellant to recover from the Defendant-Appellant a sum of Rs. 2,250/- under an agreement dated the 29th January, 1944 entered into between one Parmanand Tourmal on the one part and the Plaintiff-Respondent and one A. C. P. Wijeratne on the other part, and for a declaration the Plaintiff-Respondent was entitled to be paid Rs. 150/- a month in terms of the said agreement.

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Petition of  
Appeal  
to the  
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Court.  
10-11-50.  
—continued

2. The Plaintiff-Respondent pleaded in his plaint, after setting out certain clauses of the said agreement, that the Defendant-Appellant undertook the liability of Parmanand Tourmal under the said agreement, that the Defendant-Appellant continued to pay the Plaintiff-Respondent a sum of Rs. 150/- a month as provided in the said agreement, but that the Defendant-Appellant wrongfully refused to continue the payments after the death of Parmanand Tourmal on the 23rd March, 1948. The Plaintiff-Respondent further pleaded that by reason of the payments to the Plaintiff-Respondent as aforesaid the Defendant-Appellant was in law estopped from denying its liability to pay the Plaintiff-Respondent the monthly sum of Rs. 150/-.

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3. The Defendant-Appellant filed answer stating *inter alia* :— that the payments made by it to the Plaintiff-Respondent were made without any legal obligation on its part, and denying that it undertook the liability of Parmanand Tourmal as averred in the plaint. The Defendant-Appellant further pleaded that the rights and obligations of the parties under the agreement ceased when A. C. P. Wijeratne entered the service of the Defendant-Appellant, that is in or about June, 1946, and that the agreement thereupon ceased to be effective, denied that the Defendant-Appellant's refusal to pay was wrongful, and prayed that the Plaintiff-Respondent's action be dismissed.

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4. The case was tried on the 12th October, 1950, on the following issues :—

- (1) On the facts admitted in paragraphs 2, 3, 5 and 6 of the amended answer is the Defendant-Company liable to the plaintiff in respect of the claims, if any, arising on the agreement dated 29th January, 1944, marked P 1.
- (2) Did the Defendant-Company undertake to pay plaintiff the sum of Rs. 150/- per month mentioned in the said agreement.
- (3) (a) Did the Defendant-Company continue unconditionally to pay the said sum of Rs. 150/- per month to plaintiff from the date of its incorporation until the death of Mr. Parmanand Tourmal.
- (b) If so, is the Defendant-Company estopped from denying its liability to plaintiff on the said agreement.
- (4) If all the foregoing issues or any one of them is answered in plaintiff's favour, what sum is due from the Defendant-Company to plaintiff.

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- (5) (a) Did the rights and obligations of the parties under the agreement P 1 cease when Wijeratne entered the service of the Defendant-Company in or about June, 1946.
- (b) If issue 5 (a) is answered in the affirmative, did the agreement thereupon cease to be affective?
- (6) Did the defendant make payments to the plaintiff until June, 1948, without any legal obligation on its part to do so.
- (7) If issue 6 is answered in the affirmative, was the defendant entitled to withhold further payment at any time.
- (8) Was Wijeratne employed by the Defendant-Company with the consent of Parmanand Tourmal.
- (9) If so, is the Defendant-Company liable on the agreement P 1.

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5. By his judgment dated the 3rd November, 1950, the learned District Judge answered issue 2, 3 (a), 3 (b), 8 and 9 in the affirmative and entered judgment for the Plaintiff-Respondent as prayed for with costs.

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6. Being dissatisfied with the said judgment the Defendant-Appellant appeals therefrom to Your Lordships Court on the following among other grounds that may be urged by Counsel at the hearing of the appeal:—

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- (a) The said judgment is contrary to law and against the weight of evidence.
- (b) The learned District Judge erred in acting on the evidence of the Plaintiff-Respondent as to what the late Parmanand Tourmal told him. That evidence, it is respectfully submitted, was not supported by any other evidence and was in fact inconsistent with the document P 6.
- (c) The learned District Judge misdirected himself in holding that in this case there was a novation of contract—all the circumstances, it is submitted, indicate that there was no such novation.
- (d) The learned District Judge was wrong in law in holding that the Defendant-Appellant in as much as it continued to make payments until the death of Parmanand Tourmal was estopped thereby from denying its further liability to pay. It is submitted that the fact of payment did not amount to representation sufficient in law to create an estoppel.

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No. 14.  
Petition of  
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Court.  
10-11-50.  
—continued

Wherefore the Defendant-Appellant prays that Your Lordships' Court be pleased to set aside the judgment of the learned District Judge, to dismiss the plaintiff's action, to award the Defendant-Appellant costs and to make such other and further order in the premises as to Your Lotdships' Court may seem meet.

Sgd. JULIUS & CREASY,  
*Proctors for Defendant-Appellant.*

Settled by :

D. S. JAYAWICKREMA,  
*Advocate.*

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**No. 15.**

**Judgment of the Supreme Court,**

No. 15.  
Judgment  
of the  
Supreme  
Court.  
3-3-53.

S. C. No. 94 of 1951.

D. C. Colombo No. 21772/M

HIRDRAMANI LIMITED of 65/69, Chat-  
ham Street, Fort, Colombo.

*Defendant-Appellant.*

*vs.*

T. A. K. DE SILVA of Hospital Street,  
Fort, Colombo.

*Plaintiff-Respondent.*

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*Present :* GRATIAEN, J. and GUNASEKERA, J.

*Counsel :* H. W. JAYAWARDENA with D. R. P. GOONE-  
TILLEKE for the Defendant-Appellant.

SIR UKWATTE JAYASUNDERA, Q.C., with L.  
G. WEERAMANTRY and O. M. DE ALWIS for the  
Plaintiff-Respondant.

*Argued on :* 23rd February, 1953.

*Decided on :* 3rd March, 1953.

GRATIAN, J.

On 29th January, 1944, an agreement was entered into between three persons named Parmanand Tourmal, T. A. K. de Silva (who is the plaintiff) and A. C. P. Wijeratne (who is the plaintiff's brother-in-law). Parmanand Tourmal had for many years been carrying on

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business in Colombo under the name style and firm of "Hirdramani". He employed the plaintiff as his "leading jeweller", and Wijeratne as "assistant jeweller".

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The agreement arrived at between these three parties was, *inter alia*, to the following effect:—

- 10           “(a) The said Silva shall retire as leading jewellery maker in the firm of Hirdramani as from the 1st day of February, 1944, and shall in consideration of the sum of Rs. 475/-, being the purchase price, deliver to Mr. Parmanand all machines, tools and other implements that are now at Hirdramani and owned by Silva.
- (b) The said Wijeratne shall as from 1st February, 1944, serve under Mr. Parmanand as leading jewellery maker on such remuneration as may be agreed upon from time to time and shall devote his whole time and attention to such work and shall not work for any other person or firm whomsoever without the consent first had and obtained from Mr. Parmanand.
- 20           (c) In consideration of the services rendered as aforesaid by Silva and as long as Wijeratne is employed under Mr. Parmanand he Mr. Parmanand shall as from 1st February, 1944 pay to Silva monthly at the end of each and every month a sum of Rs. 150/- during the lifetime of Silva.
- (d) Towards the payment of the aforesaid monthly sum of Rs. 150/- by Mr. Parmanand he the said Wijeratne shall contribute a sum of Rs. 75/- monthly from his remuneration.
- 30           (e) In the event of the said Wijeratne dying or being dismissed from service or being incapacitated by illness or otherwise or leaving the service of Hirdramani at any time or in the event of the death of Silva then the payment to Silva of the said sum of Rs. 150/- shall immediately cease anything herein contained to the contrary notwithstanding.”

The term "Parmanand Tourmal" was expressed to include his heirs, executors and administrators, but no provision was made for the eventuality of an assignment of the business by the proprietor during his lifetime.

40           Parmanand Tourmal ceased to carry on the business of "Hirdramani" in his own right in 1946, when a private limited liability company, known as Hirdramani Ltd. and incorporated on 27th June, 1946, acquired the business. In fact he was the Managing Director of the Company until he died in March 1948.

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of the  
Supreme  
Court.  
3-3-53.  
- continued

It is common ground that, notwithstanding the cessation of his private business in 1946, Parmanand Tourmal continued the monthly payments of Rs. 150/- to the plaintiff until the date of his death. The learned District Judge has held as a fact that he did so as the Managing Director of the Company. After he died, the Company continued to make similar payments until May, 1949, subject however to the express qualification that the payments were *ex gratia*.

The plaintiff sued the Company on 27th October, 1949:

- (a) for the recovery of a sum of Rs. 2,250/- alleged to be due to him in respect of monthly payments since the month of June, 1948, under the agreement dated 29th January, 1944, and 10
- (b) for a declaration that the Company was liable to continue to make such monthly payments to him "in terms of the said agreement":

After trial the learned District Judge entered judgment in favour of the plaintiff as prayed for. The present appeal is from this judgment.

It is conceded that the Company could not be held liable under the original agreement, to which it was not a party, by reason only of the assignment in its favour of the business which had previously been carried on by Parmanand Tourmal personally. The contractual liability was primarily his alone, and was limited in point of time to the continuation of the contract of service between himself and Wijeratne, although I agree, as a matter of interpretation, that if his executors or administrators had carried on the business of "Hirdramani" after his death, they too would be obliged in law to pay the plaintiff's allowance so long as Wijeratne continued to serve them. 20

The basis of the plaintiff's cause of action is, as alleged in paragraph 6 of the annexed plaint, that the Company "undertook the liability of Parmanand Tourmal". In support of this allegation the plaintiff stated as follows in the course of his evidence at the trial: 30

"After I came to know that the business had been converted into a limited liability company I spoke to Mr. Tourmal. I spoke to him about the payments that were being made to me. I asked him whether there would be any change in the payments made to me according to the agreement after the business was incorporated into a limited liability company. He said he was the Managing Director and Chairman of the Board of Directors, and that there would be no change, and that the Company would pay." 40



This evidence has been accepted by the learned District Judge as a truthful account of the conversation which took place between the plaintiff and Parmanand Tourmal shortly after the Company was incorporated. He decided that the Company was therefore liable by novation to discharge Parmanand Tourmal's obligations under the original contract.

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10 If the averment that the Company "undertook the liability of Parmanand Tourmal" was intended to plead a novation, it is to say the least, lacking in precision as to the terms of the agreement whereby Parmanand Tourmal is alleged to have agreed to the extinction, by a contract of novation, of his personal obligation and the imposition of a substituted obligation on a different debtor, namely, the Company. I shall assume for the purposes of the present appeal that the plaint sufficiently complies with the wholesome rule that novation must be specially and precisely pleaded.

20 In the facts of the present case, the form of novation relied on is a transaction described by the Roman-Dutch jurists as delegation, i. e. "a contract between the debtor and the creditor of an obligation and a third party, by which the third party, with his own consent and the consent of the creditor, is substituted for the original debtor in such a way that the obligation between the original creditor and the original debtor is extinguished and a new obligation established between the original creditor and the third party". *Wessels on Contract* Vol. 1 p. 728 para 2433 (citing *Voet* 46.2.11).

30 The plaintiff could not succeed by pleading and proving that the Company had undertaken only the original obligation of Parmanand Tourmal under the agreement dated 29th January, 1944, for even upon an interpretation most favourable to the plaintiff, that particular obligation was no longer subsisting after the date of Parmanand Tourmal's death. Indeed, the action could not be maintained except upon the basis of a fresh contract whereby the Company undertook an obligation not measured by the limits of Parmanand Tourmal's extinguished liability but continuing for a period of time extending far beyond that which had been contemplated in the terms of the original contract, namely, so long as Wijeratne served "Hirdramani Ltd." as its "leading jeweller". No such contract has been pleaded or proved by the plaintiff.

40 "A novation cannot, in the absence of any express declaration by the parties, be held to exist except by way of necessary inference from all the circumstances of the case". *Darling v. Registrar of Deeds* (1912) S.A.A.D. 18 at 25. To my mind the correspondence between the plaintiff and the Company after the death of Parmanand Tourmal rules out the inference (and certainly the necessary inference) that the Company had unequivocally undertaken an

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obligation of the kind which has now been suggested. For three successive months the Company sent him a cheque for Rs. 150/- stating expressly that this was being done "without any obligation on our part". On the first two occasions the plaintiff accepted the money without registering any protest against the conditions attaching to the payment. On the third occasions, nearly a month after he had realised the cheque, he wrote to say that he felt "that the Company or in the alternative the estate of the late Mr. Parmanand Tourmal is liable to continue the payment throughout my lifetime". That suggestion was admittedly made after he had obtained legal advice. As far as the Company was concerned, it was promptly repudiated by its new Managing Director.

10

The learned District Judge has also held that the Company was estopped by its conduct from denying its obligation to continue the payments after the death of the original debtor. While I accept unreservedly the principle of estoppel by representation enunciated in *Hailsham* Vol. 1 p. 479 para 547, I do not see how it can be applied to the facts of the present case. There is no evidence to support the view that the plaintiff was misled into the belief that the Company would continue the payments "throughout (his) lifetime". On the contrary, his letter dated 28th June, 1949, negatives the theory that he entertained such an unqualified belief.

20

In the view which I have taken, it is unnecessary to decide (1) whether a novation could have taken place without the concurrence of Wijeratne, who himself had undertaken certain obligations under the previous agreement, and (2) whether Wijeratne was in fact a party to the new agreement whereby, presumably, the scope of his liability was also substantially enlarged.

It is indeed unfortunate for the plaintiff that he rejected the Company's offer to continue the payments upon the clear understanding that they would be made on an *ex gratia* basis. The plaintiff has chosen instead to obtain an adjudication of his legal rights, and I find myself constrained to decide that his claim is insupportable in law. I would therefore allow the Company's appeal and dismiss the plaintiff's action with costs both here and in the Court below.

30

Sgd. E. F. N. GRATIAEN,

*Puisne Justice.*

GUNASEKARA, J.

I agree.

Sgd. E. H. T. GUNASEKARA,

*Puisne Justice.*

40

**No. 16.**

No. 16.  
Decree  
of the  
Supreme  
Court.  
3-3-53.

**Decree of the Supreme Court.**

ELIZABETH THE SECOND, QUEEN OF CEYLON.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

T. A. K. DE SILVA of Hospital Street,  
Fort, Colombo.

*Plaintiff-Respondent.*

*against*

HIRDRAMANI LIMITED of 65/69,  
Chatham Street, Fort, Colombo.

*Defendant-Appellant.*

10

Action No. 21772/M.

In the District Court of Colombo.

This cause coming on for hearing and determination on the 23rd February and 3rd day of March, 1953 and on this day, upon an appeal preferred by the Defendant-Appellant before the Hon. Mr. E. F. N. Gratiaen, Q.C., Puisne Justice and the Hon. Mr. E. H. T. Gunasekara, Puisne Justice of this Court, in the presence of Counsel for the appellant and Plaintiff-Respondent.

20

It is considered and adjudged that this appeal be and the same is hereby allowed and the plaintiff's action is dismissed with costs both here and in the Court below.

Witness the Hon. Sir Alan Edward Percival Rose, Kt., Q.C., Chief Justice at Colombo, the 9th day of March, in the year of our Lord One thousand Nine hundred and Fifty three and of Our Reign the Second.

W. G. WOUTERSZ,  
*Deputy Registrar, S. C.*

No. 17.  
Application  
for Condi-  
tional Leave  
to Appeal  
to the  
Privy  
Council.  
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**No. 17.****Application for Conditional Leave to Appeal to the Privy Council.**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

In the matter of an application for Conditional Leave to Appeal to the Privy Council in S. C. 94/D. C. Colombo No. 21772/M.

T. A. K. DE SILVA, of Hospital Street,  
Fort, Colombo. *Plaintiff.*

*vs.*

HIRDRAMANI LIMITED of 65/69, Chat-  
ham Street, Fort, Colombo. *Defendant.*

HIRDRAMANI LIMITED of 65/69, Chat-  
ham Street, Fort Colombo.

*Defendant-Appellant.**vs.*

T. A. K. DE SILNA of Hospital Street,  
Fort, Colombo.

*Plaintiff-Respondent.*

T. A. K. DE SILVA of Hospital Street,  
Fort, Colombo. *Petitioner.*

*and*

HIRDRAMANI LIMITED of 65/69, Chat-  
ham Street, Colombo. *Respondent.*

*To*

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

On this 30th day of March, 1953.

The Petition of T. A. K. De Silva the Plaintiff-Respondent above-named appearing by Arthur Henry Abeyaratne and George Cuthbert Abeyaratne, practising in partnership under the name style and firm of Abeyaratne & Abeyaratne states as follows:—

1. Feeling aggrieved by the Judgment and Decree of Your Lordships' Honourable Court pronounced on the 3rd day of March, 1953, the petitioner the Plaintiff-Respondent is desirous of appealing therefrom to Her Majesty the Queen in Council.

2. Notice of the petitioner's intention to appeal to Her Majesty in Council has been given to the respondent within 14 days of the judgment of Your Lordships' Court above-mentioned, the said Notice having been sent to the Defendant-Appellant by registered post on the 11th March, 1953, and having been handed to the Defendant-Appellant personally on the 13th March, 1953.

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for Condi-  
tional Leave  
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to the  
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10 3. The said judgment of your Lordships' Court is a final judgment and the amount in dispute on the appeal is over Rs. 5,000/- in value; the amount in dispute on appeal being the amount in dispute on the plaint as well as the accrued continuing damages at Rs. 150/- per month.

4. The petitioner begs to state that by reason of the judgment of Your Lordships' Court the interests of the petitioner are prejudiced to the extent of Rs. 8,550/- at the time of Your Lordships' judgment.

20 5. The petitioner begs that Your Lordships' Court will be pleased in any event in the exercise of its discretion to grant the petitioner Conditional Leave to Appeal to Her Majesty the Queen in Council as this appeal involves difficult questions of law, the determination of which is a matter of great general or public importance.

Wherefore the petitioner prays :—

- (a) for conditional leave to appeal against the said judgment and decree of this Court to Her Majesty the Queen in Council;
- (b) for costs and for such other and further relief as to Your Lordships' Court seems meet.

Sgd. ABEYERATNE & ABEYERATNE,  
*Proctors for Petitioner.*

No. 18.  
Objections  
to the  
Application  
for Condi-  
tional Leave  
to Appeal  
to the  
Privy  
Council.  
13-5-53.

**No. 18.**

**Objections to the Application for Conditional Leave to Appeal to the Privy Council.**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

In the matter of an application for Conditional Leave to Appeal to Her Majesty in Council in Supreme Court No. 94, District Court Colombo No. 21772/M.

T. A. K. DE SILVA of Hospital Street, Fort, Colombo.

S. C. Application  
No. 175/1953.

*Plaintiff-Petitioner.*

D. C. Colombo 21772/M.

*vs.*

S. C. No. 94 Final.

HIRDRAMANI LIMITED of 65/69, Chatham Street, Fort, Colombo.

*Defendant-Respondent.*

On this 13th day of May, 1953.

The Statement of Objections of the Defendant-Respondent Company abovenamed appearing by Messrs. Julius & Creasy states as follows:—

1. The Plaintiff-Petitioner filed this action on or about the 14th day of September, 1949, seeking to recover from the Defendant-Respondent Company a sum of Rs. 2,250/- with interest thereon from date of action till payment in full and also praying for a declaration against the Defendant-Respondent Company that the Plaintiff-Petitioner was entitled to a monthly payment of Rs. 150/- from the month of September, 1949.

2. The Plaintiff-Petitioner based his action on an alleged agreement marked "A" and annexed to his plaint between the Plaintiff-Petitioner, one Parmanand Tourmal and one C. P. Wijeratne.

3. The Plaintiff-Petitioner in the lower Court valued his action at Rs. 2,250/- and all relevant papers and documents were stamped on this footing in Class 2 of the Stamp Ordinance.

4. By his judgment dated 3rd day of September, 1950, the learned District Judge gave judgment for the Plaintiff-Petitioner as prayed for in his plaint with costs.

5. The Defendant-Respondent Company appealed therefrom to Your Lordships' Court and Your Lordships' Court by its judgment dated 3rd day of March, 1953, allowed the appeal and dismissed the Plaintiff-Petitioner's action with costs.

10

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30

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6. The Defendant-Respondent Company received a notice of the Plaintiff-Petitioner's intention to apply to Your Lordships' Court for leave to appeal to Her Majesty the Queen in Council.

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Objections  
to the  
Application  
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tional Leave  
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7. The said notice was received by the Defendant-Respondent Company by registered post on the 12th March, 1953, and a further copy was served on the Managing Director of the Defendant-Respondent Company on the 13th March, 1953. The Defendant-Respondent Company annexes hereto marked R 1 and R 2 the said notices which were received by the Defendant-Respondent Company and served on its Managing Director respectively.

10

8. The Defendant-Respondent Company has not been informed as to the precise grounds upon which the Plaintiff-Petitioner seeks to obtain Conditional Leave to Appeal to Her Majesty the Queen in Council.

9. The Defendant-Respondent Company states that the Plaintiff-Petitioner is not entitled as of right to obtain Conditional Leave to Appeal to Her Majesty the Queen in Council as the action itself is not one which falls within any of the grounds upon which a party may obtain Conditional Leave to Appeal in terms of Rule 1 of the Schedule to the Appeals (Privy Council) Ordinance (Cap. 85.)

20

10. The Defendant-Respondent Company further states that the Plaintiff-Petitioner's application for Conditional Leave to Appeal to Her Majesty the Queen in Council must fail for the following reasons :

(a) The judgment sought to be appealed from is not one which falls within the ambit of Rule 1 of the Schedule to the Appeals (Privy Council) Ordinance (Cap. 85) and in the circumstances no appeal lies either as of right or at the discretion of Your Lordships' Court.

30

(b) The Plaintiff-Petitioner has failed to inform the Defendant-Respondent Company of the precise grounds upon which he seeks to make his application for Conditional Leave to Appeal to Her Majesty the Queen in Council and the Notices R 1 and R 2 are not in compliance with law.

Wherefore the Defendant-Respondent Company prays that the Plaintiff-Petitioner's application be dismissed with costs and for such other and further relief in the premises as to Your Lordships' Court shall seem meet.

40

Sgd. JULIUS & CREASY,  
*Proctors for Defendant-Respondent Company.*

Settled by :

H. W. JAYAWARDENE,  
*Advocate.*

**No. 19.**

**Judgment of the Supreme Court.**

APPLICATION FOR CONDITIONAL LEAVE TO APPEAL TO THE  
PRIVY COUNCIL IN S. C. No. 94 D. C. COLOMBO 21772.

APPLICATION No. 175.

*Present:* ROSE, C.J. & PULLE, J.

*Counsel:* L. G. WEERAMANTRY for the Plaintiff-Petitioner  
H. W. JAYEWARDENA with D. R. P. GOONE-  
TILLEKE for the Defendant-Respondent.

*Argued on:* 10th June, 1953.

10

*Decided on:* 7th July, 1953.

PULLE, J.

This is an application by the plaintiff for Conditional Leave to Appeal to Her Majesty in Council from a judgment pronounced by this Court on the 3rd March, 1953. The petition alleges that the matter in dispute on the appeal is of the value of over Rs. 5,000/-. The plaintiff asks the Court in any event to exercise its discretion in his favour under the provisions of Rule 1 (b) of the Rules in the Schedule to the Appeals (Privy Council) Ordinance (Cap. 85). At the hearing before us the plaintiff did not press his application under Rule 1 (b).

20

The defendant opposed the application on two grounds. His first submission was that the terms of the notice given by the plaintiff under Rule 2 did not comply with that Rule and, secondly, that the matter in dispute on the appeal did not amount to the value of Rs. 5,000/- or upwards so as to enable him to appeal as of right under Rule 1 (a).

The plaintiff alleged in his plaint that the defendant in 1946 undertook to discharge an obligation previously incurred by one Parmanand Tourmal to pay to the plaintiff, until he (the plaintiff) died, a sum of Rs. 150/- a month. In pursuance of that obligation the defendant paid that amount on the due dates but stopped doing so after about two months from the death of Parmanand Tourmal which occurred on the 23rd March, 1948. The plaintiff prayed for judgment for Rs. 2,250/- and also for a declaration that he was entitled to a monthly payment of Rs. 150/- from September, 1949.

30

On the 3rd November, 1950, judgment was given in favour of the plaintiff "as prayed for with costs". The decree drawn up on the same day ordered the defendant to pay to the plaintiff the sum



of Rs. 2,250/- with legal interest thereon from 14th September, 1949, till payment in full. The decree further ordered the defendant to pay to the plaintiff Rs. 150/- from September, 1949, in terms of a written agreement dated the 29th January, 1944, between the plaintiff and Parmanand Tourmal.

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of the  
Supreme  
Court.  
7-7-53.  
—continued

By its judgment dated the 3rd March, 1953, this Court allowed an appeal by the defendant and dismissed the plaintiff's action with costs. At the date of the judgment in appeal the amount payable under the decree was Rs. 8,500/- exclusive of interest and costs.

10 It is submitted on behalf of the defendant

(a) that the plaintiff valued his action at Rs. 2,250/- and all relevant papers and documents were stamped on this value.

(b) that in as much as judgment was as prayed for in the plaint the decree was not in conformity with it, because the prayer asked for judgment for Rs. 2,250/- and for a "declaration" that the plaintiff was entitled to a monthly payment of Rs. 150/- from September, 1949.

The notice given by the plaintiff read as follows:—

20 "To the abovenamed defendant appellant.

Take notice that I, T. A. K. de Silva the Plaintiff-Respondent in the above styled action will in accordance with the appeals (Privy Council) Ordinance apply to the Honourable the Supreme Court of the Island of Ceylon for Leave to Appeal to Her Majesty the Queen in Council against the judgment and decree of the Supreme Court pronounced on March 3, 1953.

The application for Conditional Leave will be filed in the Supreme Court within 30 days of the said judgment".

30 The objection taken to the notice is that it does not set out precisely the grounds upon which the plaintiff intended to make an application for Conditional Leave to Appeal. Reliance is placed on the case of *Kasipillai et al vs. Nagalinga Kurukkal*<sup>1</sup> which appears to cover exactly the point raised on behalf of the defendant. It is submitted on behalf of the plaintiff that the language of Rule 2 does not warrant the interpretation placed on it by the case referred to. Learned Counsel for the plaintiff also informs us that he has examined the notices given in connection with similar appli-

1. 54 N.L.R. 183.

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cations during a long period and has found them to be in substantially the same form as that given by the plaintiff and he relies on this practice to support the interpretation he places on Rule 2.

We are of the opinion that the objections raised by the defendant to the grant of Conditional Leave to Appeal are of sufficient importance to merit a hearing by a fuller Bench and we accordingly refer them to a Bench of three Judges under clause 4 of the Appellate Procedure (Privy Council) Order 1921.

Sgd. M. F. S. PULLE,  
*Puisne Justice.*

10

ROSE C. J.  
I agree.

Sgd. ALAN ROSE,  
*Chief Justice.*

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**No. 20.**

**Judgment of the Supreme Court granting Conditional Leave to Appeal to the Privy Council.**

APPLICATION FOR CONDITIONAL LEAVE TO APPEAL TO THE  
PRIVY COUNCIL IN S. C. No. 94—D. C. COLOMBO 21772.

APPLICATION No. 175.

20

T. A. K. DE SILVA *Petitioner.*

*and*

HIRDRAMANI LTD. *Respondent.*

*Present:* NAGALINGAM, A.C.J., GRATIAEN, J. and  
WEERASOORIYA, J.

*Counsel:* L. G. WEERAMANTRY with J. R. M. PERERA  
for Plaintiff-Petitioner.

H. W. JAYAWARDENE with D. R. P. GOONE-  
TILLEKE for Defendant-Respondent.

*Argued on:* 3rd August, 1953.

30

*Delivered on:* 14th September, 1953.

NAGALINGAM, A. C. J.

Two grounds of objection have been taken by the Defendant-Respondent to the Application for Conditional Leave made by the Plaintiff-Petitioner to appeal to the Queen in Council. They are,

firstly that the minimum monetary limit prescribed by Rule 1 of the Schedule to the Appeals (Privy Council) Ordinance (Chapter 85) has not been reached, and secondly that the notice given of the intended application is bad in law.

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10 The action was instituted by the plaintiff to recover a sum of Rs. 2,250/- alleged to be arrears of payments due to him under an agreement at the rate of Rs. 150/- a month and for the recovery of the additional sum that would become due at the same rate from date of action till date of decree and for legal interest. The lower Court entered judgment on 3rd November, 1950, and at that date the total amount due to the plaintiff under the decree was under Rs. 5,000/-. The defendant appealed, and this Court allowed his appeal and dismissed the plaintiff's action on 3rd March, 1953.

20 The contention on behalf of the defendant is that in these circumstances the matter in dispute on the appeal to the Queen in Council does not amount to the value of Rs. 5,000/- or upwards. On behalf of the plaintiff, however, it has been urged that for the purpose of determining the value in dispute on the appeal to the Queen in Council, the amounts that became payable to the plaintiff subsequent to the date of the decree of the lower Court and up to the date when this Court pronounced judgment should be taken into consideration.

30 I did not think that the contention of the plaintiff is sound. The plaintiff did not apply, and in fact he could not have asked, for a decree indefinitely in future for payments to be continued to be made to him at the rate of Rs. 150/- without specifying some time limit. In fact in the plaint he has not asked for payment to be made to him during an indefinite period of time. He has definitely, and I think quite properly, fixed the period up to which the Court should assess the amount payable to him as the date of entering the decree, and the lower Court has entered decree in accordance with the prayer contained in the plaint.

40 It was also sought by the plaintiff to support his argument by reference to what was termed the reciprocity test. It was put forward in this way. It was said that had this Court affirmed the judgment of the lower Court the defendant would have been entitled to a right of appeal to the Queen in Council because the liability which the plaintiff would thereby seek to get rid of would have been over Rs. 5,000/-. I do not think this proposition is sound either, for had this Court affirmed the judgment of the lower Court at the date it did set it aside, even so the amount recoverable by the plaintiff under the decree would not be anything greater than what had been fixed under the decree of the lower Court; it would be obvious that under the decree so entered the plaintiff could not have issued

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execution for a sum which may have become due subsequent to the date thereof, though it is easy to see that he would have a right to institute an action in order to recover any such sum. The test of reciprocity, too, therefore fails.

The plaintiff, however, submits in the alternative that the appeal involves indirectly "some civil right amounting to or of the value of Rs. 5,000/- or upwards." It is said on his behalf that the effect of the judgment of the lower court was to affirm the validity of the agreement under which he claims, and it would have operated as *res judicata* in regard to the existence and validity of the contract, and the liability of the defendant to pay him the sum of Rs. 150/- a month so long as the other conditions contained in that behalf continued to be fulfilled would have been conclusively and finally determined thereby. But it is urged that as a result of the judgment of the lower Court being set aside by a finding of this Court that there is no binding contract between the plaintiff and the defendant, the principle of *res judicata* now operates adversely against the plaintiff to the extent that he can at no future time claim any payment under the agreement, for the judgment of this Court is conclusive on the non-existence of a valid agreement between the parties.

It is pointed out further that having regard to the events that have occurred since the date of the judgment of the lower Court up to at least the date of application for Conditional Leave, the reversal of the judgment of this Court by the Judicial Committee of the Privy Council would have the effect of restoring to the plaintiff not only the amount decreed under the judgment of the lower Court but also indirectly confer on him the right to recover such sums as have accrued subsequent to the date of the judgment of the District Court and up to now, involving as it then would, the determination of a right which certainly would be over Rs. 5,000/- in value.

Mr. Jayawardene for the respondent strongly relied upon the case of *Mangamma vs. Mahalakshamma*<sup>1</sup>. That case, if at all, would have a bearing on the earlier question I have discussed. In that case the question was whether interest should be permitted to be added to the amount claimed, in order to reach the requisite monetary limit, and it was held that it could not be so added, because under the corresponding Indian provision it was not only necessary that the subject-matter in dispute on appeal should be of the value of Rs. 10,000/- but that the subject-matter of the action also in the Court of first instance must be of the same value. Apart from authority, it is manifest that one cannot tack on the interest that has accrued between the date of institution of action and the date of decree for the purpose of asserting that the amount in dispute at the date of action is the total of those two sums.

The precise point that arises on this part of the argument is, however, covered by another case which is also one decided by the Privy Council, and that is the case of *Ratha Krishna Ayyar vs. Sunderswamy Iyar*<sup>2</sup>. As was observed by Lord Shaw in that case,

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10 “the sum of money actually at stake may not represent the true value. The proceeding may, in many cases, such as a suit for an instalment of rent or under a contract, raise the entire question of the contract relations between the parties and that question may, settled one way or the other, affect a much greater value, and its determination may govern rights and liabilities of a value beyond the limit.”

That is the exact position in this case. While it is true that the amount at stake in the action is under Rs. 5,000/-, representing only part of the instalments that had fallen due up to the date of decree of the lower Court, the action itself raises the entire question of the existence and validity of the contract between the parties, and a settlement of that question one way or the other affects the rights and liabilities of parties beyond the sum of Rs. 5,000/-.

20 I therefore hold that the appeal involves a civil right of the value of over Rs. 5,000/- and that the plaintiff is entitled as a matter of right to appeal to the Queen in Council.

I now turn to the next objection raised, namely that relating to the sufficiency of the notice. The requirement as to the notice to be given to the opposite party is to be found in Rule 2 of the Schedule to the Appeals (Privy Council) Ordinance (hereinafter referred to as the Ordinance), and it runs as follows:—

30 “Application to the Court for leave to appeal shall be made by petition within thirty days from the date of the judgment to be appealed from, and the applicant shall, within fourteen days from the date of such judgment, give the opposite party notice of such intended application.”

The notice served on the Defendant-Company has been produced by its Managing Director, and it runs as follows:—

“Take notice that I, T. A. K. de Silva, the Plaintiff-Respondent in the above styled action will in accordance with the Appeals (Privy Council) Ordinance apply to the Honourable the Supreme Court of the Island of Ceylon for Leave to Appeal to Her Majesty the Queen in Council against the judgment

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and decree of the Supreme Court pronounced on March 3, 1953. The application for Conditional Leave will be filed in the Supreme Court within 30 days of the said judgment.

Sgd. T. A. K. DE SILVA,  
11-3-53  
*Plaintiff-Respondent.*"

It is urged that as the notice does not set out the grounds upon which it is intended to make the application for Conditional Leave the notice is bad. The law in this sense was interpreted in the case of *Kasipillai et al vs. Nagalinga Kurukkal*<sup>3</sup>, and my brother Gunasekara J. who delivered the judgment in that case came to that conclusion largely influenced by a dictum of Wijewardene C.J., in the case of *Vander Poorten vs. Vander Poorten et al*<sup>4</sup> (in which case he himself had taken part) where the learned Chief Justice suggested that the

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“object of giving notice is to enable the opposite party to be prepared to show, if possible, that the plaintiff is not entitled to appeal. The opposite party should, therefore, know in time whether the applicant claims a right to appeal and in that case, on what grounds, or whether he pleads that the Court should exercise its discretion in his favour and permit him to appeal.”

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With all respect to the learned Chief Justice other reasons can be suggested for the necessity to give notice to the opposite side of an intended application for leave to appeal. An appeal to the Queen in Council would have the effect of staying execution proceedings. Rule 7 of the Schedule to the Appeals (Privy Council) Ordinance expressly provides that this Court shall have power, in granting leave to appeal to the Queen in Council, to direct the judgment appealed from to be carried into execution, subject to conditions, if any. In the absence of such a direction any application for execution made to the District Court even though it be made before the filing of the application for Conditional Leave would be futile and abortive. See the case of *De Silva vs. Hulme King*<sup>5</sup>.

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I do not think that one should speculate upon the reason for the requirement as to notice of the intended application beyond drawing the obvious inference to be drawn from such a requirement,

3. 54 N.L.R. 183.

4. 51 N.L.R. 146.

5. 14 Ceylon Law Recorder 235.

which in the language of Hearn J. in the case of *Balasubramaniam Pillai vs. Valliapa Chettiar*<sup>6</sup> is

“merely to apprise him (the opposite party) within a reasonable time of the fact that the litigation is not at an end, and that the unsuccessful party has the intention of applying to the Court for leave to take the subject-matter in dispute between the parties to the Privy Council.”

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10 In any event, the opposite party would have ample time and opportunity after the application is filed in Court to get ready to challenge the ground or grounds upon which the right of appeal may be based by an applicant for leave to appeal. The application is required by the Rules framed by this Court to contain a statement of the particular ground upon which the appeal is sought to be rested, whether under the first or second part of sub-rule (a) or under sub-rule (b) of Rule 1 of the Schedule to the Ordinance—*vide* the form in Schedule II to the *Appellate Procedure (Privy Council) Order, 1921*<sup>7</sup>.

20 It is to be observed that there is no express provision either in the Ordinance or in the Rules that on the filing of the application for Conditional Leave notice of such application should be given to the respondent. According to the 1st Deputy Registrar, no application to Court is made now for such a notice, nor is there a uniformity of practice from which one could say that the applicant himself serves a copy of the application on the opposite party. In fact in this case there is nothing on record to indicate that the respondent was given any intimation of the filing of the application for Conditional Leave or that a copy of that petition was served upon him. According to the 1st Deputy Registrar, the parties make inquiries at the Registry, and apprise themselves of the contents of whatever  
30 papers may have been filed in the Registry.

In contrast to this statement of the 1st Deputy Registrar, Poyser S.P.J., in the case of *Pathmanathan vs. The Imperial Bank of India*<sup>8</sup> makes the significant observation :—

“Further in my experience the practice in this Court has been for the applicant to apply in the first place “ex parte” for a notice of his application to be served on the respondent and that would appear to be the most convenient practice.”

6. 40 N.L.R. 89.

7. Subsidiary Legislation Vol. I, page 472.

8. 39 N.L.R. 103.

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The notice of application the learned Judge refers to is the notice of the fact that application for conditional leave has been filed in Court. But whether notice is effected by a formal instrument issued at the instance of Court, or without the intervention of Court by the applicant, or whether even without any such instrument being served the respondent secures knowledge of the filing of the application by his own exertions, it would be correct to say that the application for leave is not disposed of excepting in the presence of or at least after proof that notice of the application has been given to the respondent, and in practice the application itself is never disposed of within thirty days of the date on which the judgment appealed from was delivered, and there is always sufficient time for the respondent to get ready to show cause against the application after receipt of notice or the gaining of knowledge of the filing of the application without it being necessary at all to be apprised, within the fortnight allowed to an applicant to give notice of the intended application, of the ground on which the right of appeal is based.

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It is not without interest to refer to a remark of Wijewardene, C.J., then Wijewardene, A.J., in the case of *Balasubramaniam Pillai vs. Valliappa Chettiar* (supra)—(he was associated with Hearne, J. in that case)—which is as follows:—

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“An applicant who sends notice and then files his application before the notice reaches the opposite party is an applicant who gives notice of his intended application, for at the time he sent the notice he had not made the application but had only formed the intention of making such application.”

I would emphasise the words, “but had only formed the intention of making such an application.” And that may be said to be precisely the object of giving notice of the intended application, that is to say, that the applicant had formed an intention of making the application but at that stage he may not have made up his mind as regards the grounds upon which he bases his application for the appeal.

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Mr. Jayawardene for the respondent also called attention to the practice of a copy of the application for leave being served along with the notice of the intended application, referred to by Drieberg, J. in his judgment in the case of *Wijesekera vs. Corea*<sup>9</sup>. But that was a practice that was in vogue under a provision somewhat different from the one which governs the question now. The present Rule 2 of the Schedule to the Ordinance was introduced by an

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amendment of 1918 of the previously existing Rule, which ran as follows:—

“Application to the Court for leave to appeal shall be made by petition within thirty days from the date of the judgment to be appealed from, and the applicant shall give the opposite party notice of his intended application.”<sup>10</sup>

It will be observed that under the earlier Rule both the notice of the intended application and the application to Court had to be made within thirty days of the date of the judgment appealed from. It was therefore convenient to combine the service of both the application and the notice, and effect at one time the service of both these documents. I think Poyser, S.P.J.’s reference in *Pathmanathan vs. The Imperial Bank of India* (supra) is very probably to the practice under the earlier provision. It will also be seen that the practice of alleging in the petition that notice had been served referred to by Driberg, J. in *Wijeyesekera vs. Corea* (supra) has been altered by the Rules framed—*vide* the form of petition in Schedule II to the Rules. It does not therefore appear to have been necessary under the earlier provision for the notice of the intended application to contain the ground on which the right of appeal is based, which would properly have been embodied in the copy of the petition itself which, as indicated, would be served on the respondent at the same time as the notice.

Mr. Jayawardene, however, says that as a result of the alteration in the law by the requirement that the notice of the intended application should be given within fourteen days, while the application to Court could be made within thirty days, of the date of the judgment, it became necessary for the notice itself to set out the grounds of appeal. I do not think this follows. The notice continued to perform the same function as earlier, merely a notice of an intention to appeal and nothing more, the grounds of the right of appeal being relegated to the petition for leave, and this is all that in my view is required under this new provision.

Though it be a small point, it is of some significance that Rule 2 of the Schedule to the Ordinance refers in the first part of it to the application that has to be made to Court for leave to appeal, but in the latter part of it it refers not to notice of such application but to notice of such intended application, which clearly emphasises the view that at that stage the reference is only to an intention to make an application, not to the application itself.

I do not therefore think that the ground upon which the right of appeal is based need be stated in the notice. The notice,

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therefore, that has been served on the Defendant-Respondent is in compliance with the requirement of the law, and the objection as to its sufficiency fails.

The case of *Kasipillai et al. vs. Nagalingam Kurukkal* (supra) must be regarded as wrongly decided.

At the conclusion of the argument we allowed the application and stated that we would give our reasons later, which I do now.

Sgd. C. NAGALINGAM,  
*Acting Chief Justice.*

APPLICATION FOR CONDITIONAL LEAVE TO APPEAL TO THE  
PRIVY COUNCIL IN S. C. No. 94/D. C. COLOMBO 21772.

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*Present:* NAGALINGAM, A.C.J., GRATIAEN, J. and  
WEERASOORIA, J.

GRATIAEN, J.

I agree with my Lord the Acting Chief Justice, and to the order proposed by him. I desire, however, to add a few observations of my own out of respect for the learned Judges who; in regard to the second objection raised by the respondent, had taken a different view in *Vanderpoorten vs. Vanderpoorten* (1949) 51 N.L.R. 145 and *Kasipillai vs. Nagalingam Kurukkal* (1952) 54 N.L.R. 183.

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The petitioner was entitled as of right to appeal to Her Majesty in Council against the final judgment pronounced by this Court, dated 3rd March, 1953. The value of the "matter in dispute on the appeal", assessed in relation to the immediate relief prayed for in the plaint, admittedly falls below Rs. 5,000/-, but this does not conclude the argument on the respondent's first objection. In the facts of the present case, it is manifest that the appeal indirectly (and, I am inclined to think, directly) "involves" a civil right whose value, if that right be established in the litigation, exceeded Rs. 5,000/- on 3rd March, 1953, and has appreciated since that date. The second part of the Rule 1(a) of the Schedule to the Ordinance therefore comes into operation. The basis of the petitioner's claim to recover Rs. 2,250/- from the respondent Company in this action is that this sum represents arrears of payments due to him under an

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agreement whereby the respondent was allegedly obliged to pay him a monthly allowance of Rs. 150/- subject to certain conditions. The respondent denies that such an agreement ever existed, and this Court has upheld the objection. In the result, the respondent would, so long as the judgment of this Court stands, forfeit not only the arrears claimed in the present action but also any claims which, in his submission, have since accrued. It is just such a situation which the second part of Rule 1(a) is intended to cover, because, as Lord Shaw points out in *Ratha Krishna Ayyar's case* A. I. R. (1922) P. C. 257, "the sum of value actually at stake" in the immediate litigation does not represent the entirety of the financial implications directly or indirectly arising from the *ratio decidendi* of the judgment which the petitioner seeks to challenge in his proposed appeal to Her Majesty in Council.

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The second objection raised by the respondent remains to be considered. The argument is that the petitioner has forfeited his right to appeal to Her Majesty in Council because he has failed to comply with the statutory condition prescribed by Rule 2 which is in the following terms :—

“Application to the Court for Leave to Appeal shall be made by petition within 30 days of the judgment to be appealed from, and the applicant shall, within 14 days from the date of such judgment, give the opposite party notice of such intended application.”

It is not disputed that the petitioner did in fact apply to this Court within 30 days for Leave to Appeal to Her Majesty in Council, and that he has within the prescribed period, given the respondent due notice of his intention to make that application. Nevertheless, the respondent contends, the notice served on him was invalid because it did not specify the particular ground on which he asserts his right to appeal to Her Majesty in Council.

Rule 2 does not expressly direct that a person should specify in advance the grounds on which he intends to base his application to appeal to Her Majesty in Council from a judgment of this Court. Nor does the Rule so direct by necessary implication. I therefore find no justification for the view that the legislature could have intended in this particular context to penalise a litigant for disobedience to an assumed statutory direction by depriving him of his accrued right to take the litigation before the highest judicial tribunal in the Commonwealth—particularly where, as here, the opposite party cannot seriously pretend that such non-obedience has caused him the slightest prejudice. I am not at all disposed to read into the procedural rules provided by the Ordinance mandatory

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directions which are not clearly and unambiguously expressed, or to infer that a drastic penalty should be imposed on a litigant for disobedience to an unexpressed statutory direction. Indeed, it is not always an easy matter, even where procedural requirements are expressly laid down by statute, to decide whether they are to be considered as “mere directions or instructions involving no invalidating consequences in their disregard, or as imperative, with an implied nullification for disobedience”.—*Maxwell on the Interpretation of Statutes* (10th Edn.) p. 376.

Rule 2, as far as it goes, is satisfied if an intending appellant gives notice to the opposite party, within the prescribed period of 14 days, of his intention to proceed further with the litigation. To that extent, the Rule lays down “an absolute enactment which must be obeyed or fulfilled absolutely”—*Woodward vs. Sarsons* (1875) L.R. 10 C.P. 733. The underlying purpose of the rule is merely (a) to apprise the opposite party within 14 days that the litigation must not be assumed to be at an end—per Hearn J., in *Balasubramaniam Pillai's case* (1938) 40 N.L.R. 89, and (b) as my Lord the Acting Chief Justice has pointed out, to give the opposite party, if he so desires, timely opportunity to apply for execution under Rule 7. As the petitioner in the present case has complied with Rule 2, his application for Conditional Leave cannot be refused.

Sgd. E. F. N. GRATIAEN,  
*Puisne Justice.*

APPLICATION FOR CONDITIONAL LEAVE TO APPEAL TO THE  
PRIVY COUNCIL IN S.C. No. 94—D.C. COLOMBO 21772.

WEERASOORIYA J.

I have seen the reasons as stated by My Lord the acting Chief Justice for allowing Conditional Leave to Appeal in this case. With those reasons I am in respectful agreement and I have nothing to add to them.

Sgd. H. W. R. WEERASOORIYA,  
*Puisne Justice.*

## No. 21.

**Decree of the Supreme Court granting Conditional Leave  
to Appeal to the Privy Council.**

ELIZABETH THE SECOND, QUEEN OF CEYLON AND OF  
HER OTHER REALMS AND TERRITORIES,  
HEAD OF THE COMMONWEALTH.

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Decree  
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Supreme  
Court  
granting  
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Appeal  
to the  
Privy  
Council.  
14-9-53.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

T. A. K. DE SILVA of Hospital Street,  
Fort, Colombo.

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*Petitioner (Plaintiff-Respondent.)*

*against*

HIRDRAMANI LIMITED of 65/69,  
Chatham Street, Fort, Colombo.

*Respondent (Defendant-Appellant.)*

Action No. 21772/M.

District Court of Colombo.

In the matter of an application dated 30th March, 1953 for Conditional Leave to Appeal to Her Majesty the Queen in Council by Plaintiff-Respondent abovenamed against the decree dated 3rd March, 1953.

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This cause coming on for hearing and determination on the 10th June, 7th July, 3rd August and 14th September, 1953, before the Hon. Mr. C. Nagalingam, Q.C., Acting Chief Justice, the Hon. Mr. E. F. N. Gratiaen, Q.C., Puisne Justice and the Hon. Mr. H. W. R. Weerasooriya, Q.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 :—

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

2. Deposit in terms of 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).

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

Witness the Hon. Sir Alan Edward Percival Rose, Kt., Q.C., Chief Justice at Colombo, the 24th day of September, in the year of our Lord One thousand Nine hundred and Fifty three and of Our Reign the Second.

W. G. WOUTERSZ,  
*Deputy Registrar, S. C.*

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No. 22.  
Application  
for Final  
Leave to  
Appeal  
to the  
Privy  
Council.  
31.8.53.

**No. 22.**

**Application for Final Leave to Appeal to the Privy Council.**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

In the matter of an application for Final Leave to Appeal to the Privy Council in S. C. 94/D. C. Colombo 21772.

THENUWARA ACHARIGE KAR-  
NOLIS DE SILVA of Fort, Colombo.  
*Plaintiff-Petitioner.*

vs.

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HIRDRAMANI LTD., of Chatham  
Street, Fort, Colombo.  
*Defendant-Respondent.*

On this 31st day of August, 1953.

To

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

The petition of the Plaintiff-Petitioner abovenamed appearing by Arthur Henry Abeyaratne and George Cuthbert Abeyaratne, practising in partnership under the name, style and firm of Abeyaratne and Abeyaratne states as follows:—

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1. This is an application by the petitioner who was the Plaintiff-Respondent in this appeal for Final Leave to appeal to the Privy Council from the judgment and decree of the Supreme Court in favour of the Defendant-Appellant, pronounced on March 3rd, 1953.
2. The petitioner obtained conditional leave to appeal to Her Majesty in Council on 6th August 1953.
3. The petitioner has given security in a sum of Rupees Three Thousand (Rs. 3,000/-) for securing the payment of any loss and all costs of appeal of the respondent which may be ordered either by this Court or by Her Majesty in Council. The petitioner has deposited in the Bank of Ceylon the said sum of Rs. 3,000/- and has mortgaged and hypothecated the said sum of Rs. 3,000/- to and with the Registrar of the Supreme Court by Bond dated 19th August, 1953. The petitioner has also paid the necessary fees for making, typing and certifying the proceedings, pleadings and documents in this case to be furnished to Her Majesty the Queen in Council.
4. The notice of final leave to appeal to Her Majesty in Council was posted to the respondent together with a copy of this petition by express and ordinary registered post and the registered postal receipts marked A and B are herewith filed. The said notice together with a copy of this petition has also been sent to the Proctors for the respondent. The registered postal receipt is filed herewith marked C. A notice together with a copy of this petition has also been delivered by hand at the registered office of the Respondent.

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Leave to  
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31-8-53  
—continued

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Wherefore the petitioner prays that Your Lordships' Court be pleased to give him Final Leave to appeal to Her Majesty the Queen in Council and for such other and further relief as to Your Lordships' Court shall seem meet.

Sgd. ABEYARATNE & ABEYARATNE,  
*Proctors for Petitioner.*

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Decree  
of the  
Supreme  
Court  
granting  
Final  
Leave to  
Appeal  
to the  
Privy  
Council.  
15-10-53.

**No. 23.**

**Decree of the Supreme Court granting Final Leave to  
Appeal to the Privy Council.**

ELIZABETH THE SECOND, QUEEN OF CEYLON AND OF  
HER OTHER REALMS AND TERRITORIES,  
HEAD OF THE COMMONWEALTH.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

T. A. K. DE SILVA of Hospital Street,  
Fort, Colombo.

*Petitioner (Plaintiff-Respondent.)*

10

*against*

HIRDRAMANI LIMITED of 65/69,  
Chatham Street, Fort, Colombo.

*Respondent (Defendant-Appellant.)*

Action No. 21772/M. (S.C. 94—Final. District Court of Colombo.

In the matter of an application by the Plaintiff-Respondent abovenamed dated 31st August, 1953, for Final Leave to Appeal to Her Majesty the Queen in Council against the decree of this Court dated 3rd March, 1953.

This cause coming on for hearing and determination on the 15th day of October, 1953, before the Hon. Mr. E. F. N. Gratiaen, Q.C., Puisne Justice and the Hon. Mr. H. A. de Silva, Puisne Justice of this Court, in the presence of Counsel for the Applicant and there being no appearance for the respondent.

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The applicant having complied with the conditions imposed on him by the order of this Court dated 3rd August, 1953, granting Conditional Leave to Appeal.

It is considered and adjudged that the applicant's application for Final Leave to Appeal to Her Majesty the Queen in Council be and the same is hereby allowed.

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Witness the Hon. Sir Alan Edward Percival Rose, Kt., Q.C., Chief Justice at Colombo, the 27th day of October, in the year of our Lord One thousand Nine hundred and Fifty Three and of Our Reign the Second.

Sgd. W. G. WOUTERSZ,  
*Deputy Registrar, S. C.*



**PART II.**

**EXHIBITS.**

**No. P 2.**

Exhibits.  
P 2.  
Certificate  
of Regis-  
tration.  
21-8-42

**P 2. Certificate of Registration.**

TRUE COPY.

Sgd.....

Asst. Regr. of Business Names, W.P.  
Colombo, 11th July, 1950.

**BUSINESS NAMES ORDINANCE (CAP. 120).**

10 **CERTIFICATE OF REGISTRATION OF AN INDIVIDUAL.**

Certificate No. 1106.

I hereby certify that the following statement, made in pursuance of the Business Names Ordinance (Cap. 120) was registered in the Office of the Registrar of Business Names for the Western Province, under number 1106 on the twenty first day of August 1942 pursuant to a statement of change furnished under section 7.

- 1. The Business Name : HIRDRAMANI.
- 2. The General Nature of Business : Dealers in silks, curios, carpets and jewellery.
- 3. The principal place of Business : 65/69, Chatham Street, Fort, Colombo.
- 4. The Date of the Commencement of the Business, if the Business was commenced after November 7, 1918. \_\_\_\_\_
- 5. Any other business Name or Names under which the Business is carried on. \_\_\_\_\_
- 6. The present Name (in full) of the Individual : Parmanand Tourmal.
- 7. Any former Name (in full) of the Individual : \_\_\_\_\_

- Exhibits.             
P 2.  
Certificate  
of Regis-  
tration.  
21-8-42.  
—continued
8. The Nationality of the Individual: British.
9. The Nationality of Origin of the Individual, if not the same as the present Nationality: \_\_\_\_\_
10. The usual Residence of the Individual: 65, Chatham Street, Fort, Colombo.
11. The other Business Occupation (if any) of the Individual: \_\_\_\_\_

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Office of the Registrar of Business Names for the Western Province situated at Horetuduwa, Moratuwa, this 21st day of August, 1942.

Sgd. J. W. A. PERERA,  
*Asst. Registrar of Business  
Names for the Western Province.*

P 8.  
Memoran-  
dum of  
Association. P 8.

**No. P 8.**

**Memorandum of Association.**

20

COPY APPLICATION No. 2607 OF 29-6-48.

MEMORANDUM OF ASSOCIATION

of

HIRDRAMANI, LIMITED.

1. The name of the Company is "HIRDRAMANI, LIMITED."
2. The registered office of the Company will be situate within the District of Colombo.
3. The objects for which the Company is established are :—
- (a) To carry on all or any of the businesses of silk mercers, silk weavers, cotton spinners, cloth and carpet manufacturers, furriers, haberdashers, hosiers, manufacturers, importers, exporters, and wholesale and retail dealers of and in textile

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fabrics of all kinds milliners, drapers, dressmakers, tailors, hatters, clothiers, outfitters, glovers, lace manufacturers, footwear makers, manufacturers, importers, exporters, and wholesale and retail dealers of and in jewellery, ornaments, artware, curios, fancy-goods, leather goods, gold, silver, and aluminium-ware, metalware, plated-goods, clocks and watches, household fittings, furnishings, accessories, kitchen-ware, stationery, toiletry, confectionery, provisions, condiments, drugs, chemicals, and other articles, commodities of personal and household use and consumption, and generally of and in all manufactured goods, materials, provisions and produce ;

Exhibits.  
P 8.  
Memorandum of Association.  
—continued

10

(b) To carry on either in connection with the businesses aforesaid or as distinct and separate businesses, the businesses of house builders, decorators, sanitary engineers, electrical engineers, shipchandlers, stevedores, carriers, contractors, shipping, transport, commission, indent, and general agents, land, estate and house agents, furniture and cabinet makers, upholsterers, warehousemen, manufacturers and dealers in hardware, jewellery, perfumery, soap, and articles required for ornament, recreation, or amusement ; gold and silversmiths, booksellers, dealers in musical instruments, agents for manufacturers of, and dealers in, household and office equipment, cycles, cars, and motor carriages ; letters of furnished and unfurnished houses, flats or apartments, licensed victuallers, wine and spirit merchants, tobacconists, and dealers in mineral and aerated waters, proprietary articles and medicines, wines, and liquors ; farmers, dairymen, market gardeners, nurserymen, and florists ;

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(c) To buy, sell, manufacture, repair, alter and exchange, let on hire, export, and deal in all kinds of articles and things which may be required for the purposes of any of the said businesses or commonly supplied or dealt with in connection with any of the said businesses ;

(d) To receive money, valuables, and goods and materials of all kinds on deposit or for safe custody ;

(e) To carry on the business of co-operative stores and general supply societies in all their branches, and to transact all kinds of agency business ;

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(f) To carry on any other business, productive manufacturing, or otherwise, which may seem to the Company capable of being conveniently carried on in connection with any of the above specified businesses, and calculated directly or indirectly to enhance the value of or render

profitable any of the Company's property or rights, and to engage in the purchase, distribution, sale, and export of raw materials and finished goods, and to carry out any processes for converting raw material into marketable goods of acceptable form and quality, and to assort, blend, select, packet, or otherwise prepare them for consumers' requirements in the Island or elsewhere according to market trends and demands;

- (g) To purchase or by any other means acquire any freehold, leasehold, or other property or any estate or interest whatever, and any rights, privileges, or easements over or in respect of any property, and any buildings, offices, factories, mills, works, wharves, roads machinery, engines, rolling stock, vehicles, plant, live and dead stock, barges, vessels, or things, and any real or personal property or rights whatsoever which may be necessary for, or may be conveniently used with, or may enhance the value of any other property of the Company; 10
- (h) To build, construct, maintain, alter, enlarge, pull down, and remove or replace any buildings, offices, factories, mills, works, wharves, roads, machinery, engines, walls, fences, and to clear sites for the same, or to join with any person, firm or company in doing any of the things aforesaid, and to work, manage, and control the same or join with others in so doing; 20
- (i) To apply for, register, purchase, or by other means acquire and protect, prolong, and renew, any patents, patent rights, licences, trade marks, designs, protections, and concessions which may appear likely to be advantageous or useful to the Company, and to use and turn to account and to manufacture under or grant licences or privileges in respect of the same, and to expend money in experimenting upon and testing and in improving or seeking to improve any patents, inventions, or rights which the Company may acquire or propose to acquire; 30
- (j) To acquire and undertake the whole or any part of the business, good-will, and assets, of any person, firm, or Company carrying on or proposing to carry on any of the businesses which this Company is authorised to carry on, and as part of the consideration or such acquisition to undertake all or any of the liabilities of such person, firm, or company, or to acquire an interest in, amalgamate with, or enter into partnership or into any arrangement for sharing profits, or for co-operation, or for limiting competition, or for mutual assistance, with any such person, firm, or company, and to give or accept, by way of consideration for any of the facts 40

or things aforesaid or property acquired, any shares, debentures, debenture stock, or securities that may be agreed upon, and to hold and retain, or sell, mortgage, and deal with any shares, debentures, debenture stock, or securities so received, and, if considered desirable or expedient, to purchase or otherwise acquire the asset and Goodwill and undertake the liabilities of any business company, or other concern whose objects are similar or approximate to those of this Company, as on and from an agreed date, together with the profits or losses accruing from such specified date to the date of purchase, transfer, or acquisition of such business or businesses as aforesaid;

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(k) To improve, manage, cultivate, develop, exchange, let on lease or otherwise, mortgage, charge, sell, dispose of, turn to account grant rights and privileges in respect of, or otherwise deal with all or any part of the property and rights of the Company;

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(l) To invest and deal with the moneys of the Company not immediately required in such shares or upon such securities and in such manner as may from time to time be determined;

(m) To lend and advance money or give credit to such firms, persons, or companies, and on such terms as may seem expedient, and in particular to customers and others having dealings with the Company, and to give guarantees or become security for any such persons, firms, or companies;

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(n) To borrow or raise money in such manner as the Company shall think fit, and in particular by the issue of debentures or debenture stock (perpetual or otherwise), and to secure the repayment of any money borrowed, raised, or owing, by mortgage, charge, or lien upon the whole or any part of the Company's property or assets (whether present or future), including its uncalled capital, and also by a similar mortgage, charge, or lien to secure and guarantee the performance by the Company of any obligation or liability it may undertake;

(o) To draw, make, accept, indorse, discount, execute, and issue promissory notes, bills of exchange, bills of lading, warrants, debentures, and other negotiable or transferable instruments;

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(p) To enter into any arrangements with any Governments or authorities, supreme, municipal, local, or otherwise, or any corporations, companies, or persons that may seem conducive to the attainment of the Company's objects or any of

Exhibits.  
—  
P 8.  
Memorandum of  
Association,  
—continued

Exhibits.  
 P 8.  
 Memorandum of  
 Association.  
 —continued

them, and to obtain from any such Government, authority, corporation, company, or person, any charters, contracts, decrees, rights, privileges, and concessions which the Company may think desirable, and to carry out, exercise, and comply with any such charters, contracts, decrees, rights, privileges, and concessions ;

- (q) To subscribe for, take, purchase, or otherwise acquire and hold shares or other interests in or securities of any other company having objects altogether or in part similar to those of this Company or carrying on any business capable of being carried on so as directly or indirectly to benefit this Company ; 10
- (r) To act as agents or as trustees for any person, firm or company, and to undertake and perform sub-contracts, and also to act in any of the businesses of the Company through or by means of agents, brokers, sub-contractors, or others ;
- (s) To remunerate any person, firm, or company rendering services to this Company, either by cash payment or by the allotment to him or them of shares or securities of the Company credited as paid up in full or in part, or otherwise, as may be thought expedient ; 20
- (t) To pay all or any expenses incurred in connection with the promotion, formation, and incorporation of the Company, or to contract with any person, firm, or company to pay the same, and to pay commissions to brokers and others for underwriting, placing, selling, or guaranteeing the subscription of any shares debentures, debenture stock, or securities of this Company ;
- (u) To support and subscribe to any charitable or public object, and any institution, society, or club which may be for the benefit of the Company or its employees, or may be connected with any town or place where the Company carries on business ; to give pensions, gratuities, or charitable aid to any person who may have been Directors of or may have served the Company, or to the wives, children, or other relatives or dependents of such persons ; to make payments towards insurance ; and to form and contribute to provident and benefit funds for the benefit of any of such persons, of their wives, children, or other relatives or dependents ; 30
- (v) To promote any other company, for the purpose of acquiring the whole or any part of the business or property and undertaking any of the liabilities of this Company, or of 40

undertaking any business or operations which may appear likely to assist or benefit this Company or to enhance the value of any property or business of this Company, and to place or guarantee the placing of, underwrite, subscribe for, or otherwise acquire all or any part of the shares or securities of any such company as aforesaid;

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P 8  
Memoran-  
dum of  
Association.  
—continued

- 10 (w) To sell or otherwise dispose of the whole or any part of the business or property of the Company, either together or in portions, for such consideration as the Company may think fit, and in particular for shares, debentures, or securities of any company whose objects are similar to those of this Company;
- (x) To distribute among the members of the Company in kind any property of the Company, and in particular any shares, debentures, or securities of other companies belonging to this Company or of which this Company may have the power of disposing;
- 20 (y) To procure the Company to be registered or recognised in any Dominion or dependency and in any foreign country or place;
- (z) To do all such other things as may be deemed incidental or conducive to the attainment of the above objects or any of them.

It is hereby expressly declared that each sub-clause of this clause shall be construed independently of the other sub-clauses hereof, and that none of the objects mentioned in any sub-clause shall be deemed to be merely subsidiary to the objects mentioned in any other sub-clause.

4. The liability of the members is limited.

- 30 5. The Share Capital of the Company is One Million Rupees divided into one thousand shares of One Thousand Rupees each with power to increase or reduce this capital, to consolidate or subdivide into shares of larger or smaller denominations and to issue all or any part of the original or any increased capital with any special or preferential rights or privileges or subject to any special terms and conditions and either with or without any special designation and also from time to time to alter, modify, commute, abrogate or deal with any rights, privileges, terms, conditions or designations for the time being attached to any class of shares in accordance with the regulations for the time being of the Company,
- 40 and to include in such issue and distribution of shares and class of shares as fully or partly paid or as free from any payment in respect thereof for the benefit of selected employees of the Company to be held by them while in the service of the Company.

Exhibits.  
P 8.  
Memorandum of Association.  
—continued

We the several persons whose names, addresses and descriptions are hereto subscribed, are desirous of being formed into a Company in pursuance of this Memorandum of Association, and we hereby respectively agree to take the number of shares in the capital of the Company set opposite to our respective names.

Name and Address of Subscriber	Description	Number of Shares taken by each Subscriber
Sgd. T. PARMANAND HIRDRAMANI	Proprietor Hirdramani	One
Sgd. P. BHAGWANDAS HIRDRAMANI	Assistant at same firm	One
Sgd. P. LALCHAND HIRDRAMANI	Assistant at same firm	One
Total Shares taken		Three

Witness to above signatures.

Sgd. Illegibly.

Sgd. Re. 1/-  
Stamp.

True Copy.

Sgd. Illegibly.

*Registrar of Companies.*

Colombo, 9th July, 1948.

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P 9.  
Articles of Association.  
27-6-46.

P 9.

## Articles of Association.

COPY APPLICATION No. 2603, OF 28-6-48.

ARTICLES OF ASSOCIATION

OF

HIRDRAMANI, LIMITED.

The Articles of Association of the Company shall be the same as the Regulations contained in Table marked "A" in the First Schedule to the Companies' Ordinance, No. 51 of 1938, subject to the following alterations, additions and modifications unless repealed, added to, or altered by special resolution :—

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## PRELIMINARY.

1. The Company is a Private Company within the meaning of Section 27 of the Companies' Ordinance, No. 51 of 1938, and accordingly:—

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Articles of  
Association.  
27-6-46.  
—continued

- 10 (a) The number of its members shall not exceed fifty, not including persons who are in the employment of the Company and persons who having been formerly in the employment of the Company, were, while in that employment, and have continued after the determination of such employment to be, members of the Company; and where two or more persons hold one or more shares jointly, they shall for the purpose of this Articles be treated as a single member;
- (b) There shall be no invitation to the public to subscribe for any shares, debentures or debenture stock of the Company; and
- (c) The right to transfer its shares is restricted in the manner hereinafter provided.

## SHARES.

20 2. As the Company is a Private Company in accordance with, and subject to the provisions of the Companies' Ordinance, No. 51 of 1938,

- (a) the Directors may refuse to register any transfer of a share without assigning any reason;
- (b) the Directors shall refuse to register any transfer of a share which would have the effect of increasing the number of members to more than fifty;
- 30 (c) subject to the foregoing restrictions shares may be transferred, with the consent of Directors, only to a member of the shareholder's family as defined below, and to no one else. Members of a share holder's family shall mean the wife or husband, brother or sister, son or daughter of a shareholder and no one else, but adopted and foster-children of a shareholder shall be regarded as members of such a shareholder's family.
- (d) every transfer must be in writing and must be left at the office of the Company accompanied by a certificate of the shares to be transferred, and such other evidence (if any) as the Directors may require to prove the title of the

Exhibits.  
 P 9.  
 Articles of  
 Association.  
 27-6-46.  
 —continued

intending transferee, provided that any action taken upon any such transfer other than a notification of approval or consent of the Directors to such transfer, or the actual due registration of such transfer, shall not be deemed an approval or the expression of any consent or approval of the board of Directors to such transfer;

- (e) no transfer shall be made to a bankrupt or to a person of unsound mind;
- (f) in the case of the death of a shareholder, the survivors or survivor where the deceased was a joint holder, and the spouse of the deceased (unless otherwise provided for) when he was a sole holder shall be the only persons recognised by the Company as having any title to his shares, but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share jointly held by him; 10
- (g) subject to the provisions hereinbefore contained any guardian of a lunatic member or other person duly authorised to deal with his estate, and any person becoming entitled to a share in consequence of the death or bankruptcy of any member, or otherwise by operation of law, may, upon producing such evidence of title as the Directors require, register himself as holder of the shares; 20
- (h) if any such guardian or other person so becoming entitled shall elect to be registered himself, he shall deliver or send to the Company a notice in writing signed by him stating that he so elects, and for all purposes of these presents relating to the registration of transfers of shares, such notice shall be deemed to be a transfer and is subject to the regulations as to transfer hereinbefore contained; 30
- (i) a person entitled to a share by transmission shall be entitled to receive and may give a discharge of any dividends, instalments of dividends, bonuses or other money payable in respect of the share but he shall not be entitled to receive any notice of, or to attend, or vote at meetings of the Company, or as aforesaid to any of the rights or privileges of the members, unless and until he shall have been registered as a member in respect of such share or shares;
- (j) in addition to ordinary Shares issued to subscribers to the Share Capital of the Company and to regular members of the Company, there may also be issued, if the Directors so decide, shares for the special benefit of selected employees 40

which shall not confer on the holders any voting powers or rights, or other privileges of Ordinary Shareholders, and shall not be transmissible on the death of any such holder or holders, to his or their beneficiaries, heirs, or assigns, on which, so long as the original allottees hold them, they shall be entitled to receive the dividends declared on them by the Board of Directors, at rates decided upon by the Board; and such shares shall, after the death or the cessation of employment in the Company's service of any holder or holders lapse to the Company, and be cancelled in the Company's records providing, however, that, at the sole discretion of the Directors, the appraised value of such shares as determined by the Directors whose ruling in this behalf shall be binding on all concerned shall be payable to the beneficiaries of any deceased Shareholder or Shareholders, or of any Shareholder or Shareholders whose service with the Company has ceased for reasons unaffecting his or their efficiency, fidelity, and general good character, less the par value of such share or shares where an allotment was made without any consideration in cash having been received therefor; and, in any other case, according to the decision of the Directors, in all the circumstances of the case, which parties concerned shall not have the right to question, in view of the fact that the allotment of such shares is to be a matter of grace and favour on the part of the Company, and not of obligation, and that the allotment shall be cancelled, otherwise than as provided for above, in the event of any disloyalty, default, or misdemeanour on the part of the allottee such as may make his retention in the Company's service and employ undesirable or inexpedient.

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 27-6-46.  
 --continued

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#### DIRECTORS.

3. (a) The first Directors of the Company shall be Parmanand Tourmal Hirdramani; Mrs. Navanid Parmanand Hirdramani, wife of the said Parmanand Tourmal Hirdramani; Bhagwandas Parmanand Hirdramani; Lalchand Parmanand Hirdramani; and Nandhlal Parmanand Hirdramani; all of whom shall be Life Directors, and the first named shall be Managing Director and Chairman of the Board of Directors. Two Directors shall be sufficient as a quorum for any meeting of Directors;
- (b) Shares comprising the Issued and Subscribed Capital of the Company shall be allotted as fully paid to the aforesaid Life Directors in the following proportions:

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 —continued

To Parmanand Tourmal Hirdramani	Thirty per cent.
To Bhagwandas Parmanand Hirdramani	Twenty-five per cent.
To Mrs. Navanid Parmanad Hirdramani	Twenty per cent.
To Lalchand Parmanand Hirdramani	Fifteen per cent. and
To Nandhlal Parmanand Hirdramani	Ten per cent.

- (c) Any Director may at any time appoint another Director or any other person approved by the Directors to act as alternate for him and may at any time cancel such appointment. A Director or such other person appointed alternate for a Director shall be entitled to perform all the functions of his appointer including the functions of the Managing Director. A Director appointed as alternate Director shall have an extra vote at meeting for each Director whom he represents in addition to his own vote as Director. Any alternate Director shall *ipso facto* cease to be an alternate Director if his appointer ceased for any reason to be a Director. All appointments and renewals of alternate Directors shall be effected by writing under the hand of the Director making or revoking such appointment left at the office ;
- (d) A resolution in writing signed by all the Directors for the time being in Ceylon, shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted ;
- (e) The Directors and Managing Director shall be repaid all travelling or other expenses incurred by them if they shall be called upon to go out of Ceylon for any of the purposes of the Company. The Company shall remunerate the Director or Directors for so doing, either by fixed sum, or by a percentage of profits or otherwise, as may be determined, and such remuneration may be either in addition to, or in substitution for, his or their share of travelling or other expenses ;
- (f) The office of Directors, other than that of a life Director, shall *ipso facto* be vacated :—
- (i) If, being a Managing Director, Manager or Secretary, he ceases by virtue only of the office to which he is so appointed, to hold such office or appointment ;
  - (ii) If he be adjudicated a bankrupt or a person of unsound mind ;
  - (iii) If by notice in writing to the Company he resigns his office.
- (g) The other disqualification specified in regulation 72 of Table A shall not apply to this Company.

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- (h) No Director shall be disqualified or fettered by his office from contracting with the Company, either as vendor, purchaser, or otherwise, nor shall any Director in regard to any contract or arrangement entered into by or on behalf of the Company in which any Director shall be in any way interested, be liable to account to the Company for any profit realised by any such contract or arrangement by reason only of such Director holding that office or of the fiduciary relations thereby established but it is declared that the nature of his interest must be disclosed by him at the meeting of the Directors at which the contract or arrangement is determined, or if his interest then exists, or in any other case at the first meeting of Directors after the acquisition of his interest, and that no Director shall as a Director, vote in respect of any contract or arrangement in which he is so interested as aforesaid, and if he does vote, his vote shall not be counted, but this prohibition shall not apply to any contract by or on behalf of the Company to give to the Directors or any of them any security by way of indemnity, and it may at any time or times be suspended or relaxed to any extent by a General Meeting. A general notice that a Director is a member of any specified firm or Company, and is to be regarded as interested in all transactions with that firm or Company, shall be sufficient disclosure under this clause as regards such Director and the said transactions, and after such general notice it shall not be necessary for such Director to give a special notice of any particular transaction with that firm or Company. Any Director may act by himself or his firm in a professional capacity for the Company, and he and his firm may be remunerated for professional services as if he were not a Director;
- (i) The Directors may from time to time entrust to and confer upon a Managing Director for the time being such of the powers exercisable under these presents by the Directors as they may think fit and may confer such powers, for such time, and to be exercised for such objects and purposes, and upon such terms and conditions and with such restrictions as they think expedient, and they may confer such powers either collaterally with, or to the exclusion of and substitution for all or any of the powers of the Directors in that behalf, and may from time to time revoke, withdraw, alter or vary all or any of such powers;
- (j) The salary of the Managing Director shall be Rs. 2,500 a month, of Bhagwandas Parmanand Hirdramani and Lalchand Parmanand Hirdramani Rs. 250 and Rs. 200, respectively, a month; and the other two Directors shall not

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 —continued

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Exhibits,  
 P 9.  
 Articles of  
 Association.  
 27-6-46.  
 —continued

be entitled to any salary, but shall receive fees as sanctioned by the Board of Directors or by the Managing Director for attendance at any meeting of the Board of Directors, and their travelling and incidental expenses in connection with such attendance shall be refundable to them ;

- (k) In the case of need, when any Director is absent from the Island or all the Directors are so absent, or otherwise unavailable, or unable to attend a meeting of the Board or in circumstances of a like nature, it shall be competent for the Board of Directors or for the Managing Director to appoint any person or persons not exceeding three such persons, whether qualified by his or their holding of the requisite number of shares or of any shares whatever, to fill or to officiate in such capacity, to be a Director or to be Directors during such period as may be decided upon by the Board of Directors or by the Managing Director ; providing, however, that the emergency in consideration of which any appointments of this kind are made, shall continue beyond the prescribed period, the appointee or appointees shall also continue to act and officiate until the appointments shall be determined and revoked by the Board of Directors or the Managing Director as the case may be ;

#### DIVIDENDS.

4. Any general meeting declaring a dividend may direct payment of such dividend wholly or in part by specie or by an issue of shares, paid up or partly paid up, and the Directors shall give effect to such resolution ; and where any difficulty arises in regard to the distribution they may settle the same as they think expedient.

#### CAPITALISATION OF RESERVES.

5. Any ordinary general meeting declaring a dividend may resolve that such dividend be paid wholly or in part by the distribution of specific assets and in particular in paid up shares, debentures or debenture stock of the Company ; and any general meeting may resolve that any moneys, investments or other assets forming part of the undivided profits of the Company standing to the credit of the reserve fund or in the hands of the Company and available for dividend or representing premiums received on the issue of shares and standing to the credit of the share premium account be capitalised and distributed among the shareholders in accordance with their rights on the footing that they may become entitled thereto as capital and that all or any part of such capitalised fund be applied on behalf of the shareholders in paying up in full any unissued shares of the Company and that such unissued shares so

fully paid up be distributed accordingly among the shareholders in the proportion in which they are entitled to receive dividends and shall be accepted by them.

Exhibits  
P 9.  
Articles of  
Association.  
27-6-46.  
—continued

## SEAL.

6. (a) The seal of the Company shall not be affixed to any instrument except in the presence of at least one Director and the Secretary, or some other person appointed by the Directors, and the said Director and Secretary or such other person shall sign every instrument to which the seal shall be so affixed in their presence ;
- (b) All cheques, bills of exchange, promissory notes, bankers' drafts, post office orders, bills of lading, charter-parties, warrants and other negotiable instruments in relation to the operations and transactions of the Company shall be respectively drawn, accepted, made and endorsed by such person or persons, and in such manner, and subject to such restrictions and conditions (if any) as the Directors may from time to time direct.

10

## BANKERS.

7. The Company's banking account shall be kept with the Chartered Bank of India, Australia and China, or with such bankers or banker as the Directors shall from time to time determine.

20

IN WITNESS whereof the subscribers to the Memorandum of Association have hereunto set and subscribed their names at Colombo this Twenty seventh day of June, 1946.

Name and Address of Subscriber	Description	Number of Shares taken by each Subscriber
Sgd. T. PARMANAND HIRDRAMANI	... Proprietor, Hirdramani...	One
Sgd. P. BHAGWANDAS HIRDRAMANI	... Assistant at same firm ...	One
Sgd. P. LALCHAND HIRDRAMANI	... Assistant at same firm ...	One
Total Shares taken ...		Three

30

Witness to the above signatures:—

Sgd. Illegibly.

True Copy

Sgd. on Two -/50 cts.

Stamps Illegibly.

Sgd. Illegibly.

*Registrar of Companies.*

Colombo, 1st July, 1948.

Exhibits.

P 3.  
Letter from  
Defendant  
to Plaintiff  
9-4-48.

**P 3.****Letter from Defendant to Plaintiff.**

HIRDRAMANI LTD.

65/69, Chatham Street, Fort,  
Colombo, 9th April. 1948.

K. De. Silva, Esqr.,  
Hospital Street,  
Colombo.

Dear Sir,

We enclose herewith a cheque for Rs. 150/- being the amount paid to you monthly by the late Mr. T. Parmanand. 10

As you are aware of Mr. Parmanand died recently and before his death our Company was formed.

We are therefore continuing this payment without any obligation or binding on our part.

Please acknowledge receipt.

Yours faithfully,  
HIRDRAMANI, LTD.  
Sgd. Illegibly.  
*Director.* 20

P 4.  
Letter from  
Defendant  
to Plaintiff.  
30-4-48.

**P 4.****Letter from Defendant to Plaintiff.**

HIRDRAMANI LTD.

65/69, Chatham Street, Fort,  
Colombo, 30th April, 1948.

K. De Silva Esq.,  
Hospital Street,  
Colombo.

Dear Sir,

By our letter of 9th inst., we informed you the condition subject to which we will be paying you your monthly payment and you have doubtless accepted the payment subject to that condition. 30

We are enclosing herewith cheque for Rs. 150/- being April payment and shall be glad if you will acknowledge receipt.

Please note that all future payments will be subject to that condition.

Yours faithfully,  
HIRDRAMANI LTD.  
Sgd. Illegibly.  
*Director.* 40



**P 5.****Letter from Defendant to Plaintiff.****P 5.** HIRDRAMANI LTD.65/69, Chatham Street, Fort,  
Colombo, 31st May, 1948.K. De Silva Esq.,  
Colombo.

Dear Sir,

10 Enclosed please find cheque No. T. 174596 on Chartered  
Bank for Rs. 150/- drawn in your favour subject to the condition  
mentioned in our previous letter and which you have accepted.

Please acknowledge receipt.

Yours faithfully,  
HIRDRAMANI LTD.

Sgd. Illegibly.

*Director.***P 6.****Letter from Plaintiff to Defendant.****P 6.**35, Hospital Street,  
Fort,  
Colombo, 28th June, 1948.Messrs. Hirdramani Ltd.;  
Colombo.AGREEMENT DATED 29-1-44, BETWEEN THE LATE MR.  
PARMANAND TOURMAL AND K. DE SILVA.

Sirs,

I am in receipt of your letters, dated 9-4-48, 30-4-48, and  
31-5-48, enclosing cheques due to me and thank you for same.

30 However, I find it difficult to understand why you state  
that these payments are being made without any obligation or  
binding on your part and I shall be glad if you will explain your  
position clearly for my future guidance.

I have not in anyway accepted this position of yours  
although you state that I have done so.

I feel that the company or in the alternative the estate of  
the late Mr. Parmanand Tourmal is liable to continue the payment  
of the said sum throughout my life.

Yours faithfully,  
Sgd. T. A. K. DE SILVA.

Exhibits.  
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P 5.  
Letter from  
Defendant  
to Plaintiff.  
31-5-48.

P 6.  
Letter from  
Plaintiff to  
Defendant.  
28-6-48.

## P 7.

Exhibits.  
 P 7.  
 Letter from  
 Defendant  
 to Plaintiff.  
 29-6-48.

**Letter from Defendant to Plaintiff.**

P 7.

HIRDRAMANI LTD.

65/69, Chatham Street,  
 Colombo, 29th June, 1948.

T. A. K. de Silva Esq.,  
 35, Hospital Street,  
 Fort, Colombo.

Dear Sir,

RE AGREEMENT, DATED 29-1-44, BETWEEN THE LATE  
 MR. PARMANAND AND YOURSELF.

10

We are in receipt of your much belated letter of 28th inst.,  
 in reply to our letters enumerated therein.

The late Mr. Parmanand as proprietor of the firm of  
 "Hirdramani" agreed to pay you Rs. 150/- and he did not bind his  
 estate to pay the sum nor could he bind his heirs.

As the Managing Director of the Company I have to  
 protect the interests of the shareholders and I cannot bind the  
 Company or the shareholders to pay any sum to any person to  
 whom the late Mr. Parmanand made any payment.

20

The agreement is now at an end and I continued paying you  
 the sum without any binding or obligation merely as I did not want  
 to deprive any person of any sum which he was receiving during the  
 life time of the late Mr. Parmanand.

If you do not accept this position you are at liberty to take  
 whatever steps you like and we shall not in future send you the  
 remittance unless and until you accept the position that the payment  
 made by us is purely an *ex gratia* payment without any obligation  
 or binding on our part.

Yours faithfully,  
 HIRDRAMANI LTD.

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Sgd. Illegibly,  
 Director.

Supreme Court of Ceylon  
No. 94 (Final) of 1951.

District Court, Colombo  
No. 21772.

*In Her Majesty's Privy Council  
on an Appeal from the Supreme Court of Ceylon.*

BETWEEN

T. A. K. DE SILVA of Hospital Street,  
Fort, Colombo. *Plaintiff-Appellant.*

AND

HIRDRAMANI LIMITED of 65/69, Chatham  
Street, Fort, Colombo. *Defendant-Respondent.*

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RECORD  
OF PROCEEDINGS

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