~~PC GLT.G. 2~~

Supreme Court of Ceylon
No. 517 of 1954

Appeal under the Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949

10, 1958

18 1956

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

BETWEEN

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

AND

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

# RECORD OF PROCEEDINGS

Supreme Court of Ceylon
No. 517 of 1954

Appeal under the Indian and
Pakistani Residents (Citizenship)
Act No. 3 of 1949

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

BETWEEN

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

AND

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

# RECORD OF PROCEEDINGS

2——J. N. R 6501-50 (5/56)

## INDEX

No. 1.
Application for Registration as a Citizen of Ceylon.
29.3.51.

## No. 1

## Application for Registration as a Citizen of Ceylon

District :.....

Application No. J 514

Registered under No.

## THE INDIAN AND PAKISTANI RESIDENTS (CITIZENSHIP) ACT, No. 3 OF 1949

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### Application, under section 4 (1) of the Act, for registration as a Citizen of Ceylon by a married male whose marriage has not been dissolved by death or divorce prior to the date of the application

*Note.*—(1) The application shall, as required by section 7 (1) (*b*) of the Act, be supported by an affidavit of the applicant as to the facts and particulars set out in the application and be transmitted or delivered to the Commissioner for the Registration of Indian and Pakistani Residents.

(2) The applicant may, at any time before the disposal of the application, submit to the Commissioner affidavits of other persons who have direct knowledge of any facts or particulars set out in the application or the names of any such persons or certified copies of any documents on which the applicant relies for proof of anything set out in the application. If the applicant wishes to attach any such affidavits or certified copies of documents to the application, he may do so, marking such affidavits and copies and referring to them in the relevant paragraphs of the application. The applicant may also annex to the application a list of persons on whose evidence he relies, noting thereon the matters which are within the knowledge of each such person.

(3) The applicant shall write his signature on the application in ink. If the applicant cannot write his signature, the applicant shall affix his left thumb impression in ink on such part of the application as is provided for the applicant's signature.

(4) The signature or the left thumb impression of the applicant shall be written or affixed by him on the application in the presence of, and be attested by, two witnesses.

No. 1.
Application for Registration as a Citizen of Ceylon
29.3.51.
*Contd.*

(5) Where the applicant has a wife not living apart from him in accordance with a duly executed deed of separation or a decree of separation pronounced by a competent court, or any legitimate minor child or children born to him and ordinarily resident in Ceylon and dependent on him, or any minor child or children borne by his wife prior to her marriage with him and ordinarily resident in Ceylon and dependent on him, he is advised, if he desires to procure the registration of the wife or such child or children simultaneously with his registration, to set out the required particulars in paragraph 15 of and in the Schedule to, the application. Instead of including in the application a request for the registration of the wife or such child or children, the applicant may, by a subsequent letter sent to the Commissioner at any time before the disposal of the application, request that the wife or such child or each such child be registered as a citizen of Ceylon. Such letter shall contain the aforesaid particulars.

(6) In the Act, " Indian or Pakistani resident " means a person—

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

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

and includes a descendent of any such person.

(7) For the purposes of the Act, the continuity of residence of an Indian or Pakistani in Ceylon is, notwithstanding his casual absence from Ceylon, deemed to have been uninterrupted if such absence did not on any one occasion exceed twelve months in duration.

I. I,* Puthuppatti Kitnan Duraisamy (P. K. Duraisamy) in the exercise of the privilege conferred by section 4 (1) of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, do hereby apply to the Commissioner for the Registration of Indian and Pakistani Residents, for registration as a citizen of Ceylon.

II. I request that, simultaneously with myself, each person mentioned in paragraph 15 of this application be registered as a citizen of Ceylon.

III. I am an Indian†/a Pakistani resident.

IV. I am a married male whose marriage has not been dissolved by death or divorce.

V. I have been continuously resident in Ceylon during the period of seven years commencing on January 1, 1939, and ending on December 31, 1945.

VI. I have been continuously resident in Ceylon from January 1, 1946, to the date of this application.

VII. I declare that I am free from any disability or incapacity which may render it difficult or impossible for me to live in Ceylon according to the laws of Ceylon.

I understand clearly that, in the event of my being registered as a citizen of Ceylon—

(*a*) I shall be deemed in law to have renounced all rights to the civil and political status which I have had, or would, but for registration as a citizen of Ceylon, have had, under any law in force in the territory from which I/‡ my father/‡ ancestor emigrated ; and

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

VIII. The necessary particulars are set out below.

(Sgd.) P. K. DURAISAMY,
*Signature of Applicant.*

*Witnesses :*

1. *Siganture :* (Sgd.) W. R. FLACK

   *Name, occupation and address :* W. R. Flack, Esq.,
   Superintendent,
   Glentilt Estate,
   Maskeliya

2. *Signature :* (Sgd.) G. R. D. KARUNAWARDENA

   *Name, occupation and address :* Mr. G. R. D. Karunawardena,
   Assistant Teamaker,
   Glentilt Estate,
   Maskeliya

**For Office Use**

**Instructions to applicant for specifying the required particulars**

**Particulars**

1. If the full name is a composite of more than one separate name, state the separate names in the order in which registration is desired.

1. Full name : Puthuppatti Kitnan Duraisamy (P. K. Duraisamy)
Head Clerk, Glentilt Estate, Maskeliya

2. The Divisional Revenue Officer's Division should, if possible, be stated in the address.

2. Full address : Ambegamuwa Korale, Uda Bulathgama

3. A certificate of birth or an affidavit should be annexed if age between 18 and 25 years.

3. Age : 39 years
Date of birth (if between 18 and 25 years of age) :

4. Place of birth : India on 1.7.1912

5. A certificate of marriage or an affidavit should be annexed.

5. Date of marriage : April 1932

6. Fill up such part of the Schedule to the application as relates to the applicant.

6. The places of residence of the applicant in Ceylon from January 1, 1939, to the date of this application, and the period of residence at each such place are stated in the Schedule to this application : Aug. 44/Feb. 45—Roseland Estate, Bandarawela, 1939 to 1944 Aug. Brunswick Group, Maskeliya, March 45/Apr. 45 Ekolsund Estate, Maskeliya, April 1945 to-date Glentilt Estate, Maskeliya.

7. See instructions relating to paragraph 1.

7. Full name of applicant's wife : Duraisamy Sellammal

8. Fill up such part of the Schedule to the application as relates to the wife.

8. The places of residence of the Applicant's wife in Ceylon from January 1, 1939 or from the date of marriage with the applicant, whichever is the later date, to the date of this application, and the period of residence at each such place are stated in the Schedule to this application has been all throughout residing with her husband—*see* Column 6 above

9. See instructions relating to paragraph 1.

9. Full names and dates of birth of all such legitimate minor children born to the applicant as are ordinarily resident in Ceylon and dependent on him :—

| *Names* | | *Dates of Birth* |
|---|---|---|
| Duraisamy Ramakrishnan | .. | Born on Brunswick Group, Maskeliya, on 23/10/39 |
| Duraisamy Rajambal | .. | Born on Brunswick Group, Maskeliya, on 21/8/41 |
| Duraisamy Rajeswari | .. | Born on Glentilt Estate, Maskeliya, on 22/12/46 |
| Duraisamy Rajalakshmi | .. | Born on Glentilt Estate, Maskeliya, on 3/3/48 |

10. See instructions relating to paragraph 1.

10. Full names and dates of birth of all such minor children borne by the wife of the applicant prior to her marriage with him as are ordinarily resident in Ceylon and dependent on him :—

| *Names* | *Dates of Birth* |
|---|---|
| Nil | |

11. Fill up such part of the Schedule to the application as relates to minor children.

11. The places of residence in Ceylon of each minor child mentioned in paragraphs 9 and 10 above from January 1, 1939, or from the date of birth, whichever is the later date, to the date of this application, and the period of residence at each such place are stated in the Schedule to this application.

12. Names and addresses may be briefly stated.

12. Names, addresses and relationship to the applicant of all such persons not mentioned in paragraphs 7, 9 and 10 above, as are dependent on him :—

| *Name* | *Addresses* | *Relationship* |
|---|---|---|
| Nil | | |

Paragraph 13 should only be filled up if the applicant claims that the income from the business or employment is adequate.

13. If the applicant has a business or employment claimed by him to be sufficient to support the applicant and dependants, if any, the description of the business or employment : Head Clerk, Glentilt Estate, Maskeliya, also has got a share of Rs. 2,000 in boutique No. 13, Main Street, Maskeliya

14. Paragraph 14 need not be filled up if paragraph 13 is filled up.

14. Other sources of income derived whether by the applicant alone or by the applicant and any dependants which can be applied for support of the applicant and dependents, if any :—

| *Name of Person deriving Income* | *Source of Income* | *Income per Mensem* Rs. c. |
|---|---|---|
| Applicant .. .. | Estate employment .. .. | 350 0 |
| Do. .. .. | Ricestore-keeping .. .. | 25 0 |
| Do. .. .. | Supervision of Estate Lorries .. | 10 0 |
| Do. .. .. | Kaddai Rent collection .. | 35 0 |
| Duraisamy Sellammal (w/o Applicant).. | Milk Dairy .. .. | 75 0 |
| | Total .. | 495 0 |

15. In the case of children, certificates of birth or an affidavit should be annexed.

15. Names of persons from among those mentioned in paragraphs 7, 9 and 10 above, whose registration as citizens of Ceylon is desired by the applicant simultaneously with his registration.

*Names*

P. K. Duraisamy, Head Clerk, Glentilt Estate, Maskeliya
Mrs. D. Sellammal w/o above, Glentilt Estate, Maskeliya
D. Ramakrishnan, Scholar, St. John Bosco's College, Hatton
D. Rajambal c/o Rev. Mother Superior, St. Gabriel's Convent, Hatton
D. Rajeswari at Parent's address.
D. Rajalakshmi at Parent's address.

## SCHEDULE

*(See paragraphs 6, 8 and 11 above)*

**[Any place at which the applicant or his wife or a minor child has resided for less than three months need not be mentioned**

| Applicant. | | Applicant's wife | | Minor children mentioned in paragraphs 9 and 10 of the application | | |
|---|---|---|---|---|---|---|
| Places of residence Ceylon from January 1, 1939, to the date of the application | Approximate period of residence at each place of residence in Ceylon | Places of residence in Ceylon from January 1, 1939, or from the date of marriage, whichever is the later date, to the date of the application | Approximate period of residence at each place of residence in Ceylon | Name of each of the aforesaid children | Places of residence of each of the aforesaid children in Ceylon from January 1, 1939, or from the date of birth, whichever is the later date, to the date of the application | Approximate Period of residence each of the aforesaid children at each place of residence in Ceylon |
| | | | | | | |
| ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... | ..... | ..... | ..... |

## AFFIDAVIT

*(To be completed by the applicant in support of the application)*

I do solemnly, sincerely and truly declare and affirm that the foregoing particulars stated in this application are true, and I make this statement conscientiously believing the same to be true.

(Sgd.) P. K. DURAISAMY.
*Signature of Applicant.*

Sworn at Glentilt Estate this 29th day of March, 1951.

Before me M. G. E. DE Silva, Esq.
Name of Justice of the Peace.

(Sgd.) M. G. E. DE SILVA,
*Signature of Justice of the Peace.*

Application No. J. 514.



## Note on evidence furnished at Investigation

| | *Whether furnished* | *Reference to papers in File* |
|---|---|---|
| (1) (*a*) That applicant is an Indian or Pakistani Resident Applicant's Village in India is Puduppalli in Trichy District according to the record sheet | Yes | |
| (*b*) T..... .. .. | Yes/No | |
| (2) That the applicant has been continuously resident .. | Yes/No Only in the following periods | |

*Salary memo, Brunswick Group, shows residence from Jan. 1939 to August, 1944 :—*

| | | | | | |
|---|---|---|---|---|---|
| Jan. | 1939—28.50 | June | 1940—31.00 | Jan. | 1944—69.00 |
| June | 1939—28.50 | Jan. | 1943—60.70 | June | 1944—73.00 |
| Jan. | 1942—53.00 | June | 1943—76.80 | Aug. | 1944—22.40 |
| June | 1942—17.50 | Jan. | 1941—36.50 | | |
| Jan. | 1940—31.00 | June | 1941—36.50 | | |

From August 1944 to March 1945, letter from Superintendent Roseland Estate filed .. .. Page 15

*From May 1945 to date on Glentilt Estate. The salary memo gives the following :—*

| | | | |
|---|---|---|---|
| May 1945—104.20 | Jan. 1946—259.48 | Jan. 1947—251.50 | Jan. 1951—384.70 |
| Dec. 1945—243.91 | June 1946—245.50 | June 1947—263.50 | June 1951—399.40 |
| Jan. 1948—258.40 | Jan. 1949—302.80 | Jan. 1950—312.30 | |
| June 1948—302.80 | June 1949—302.80 | June 1950—325.10 | |

(3) That, where the applicant is a married male, his wife and dependent minor children have been ordinarily resident.

Brunswick Group ration register not available for January 1942 and February 1942

The ration register Brunswick Group shows residence from June 1942 to August 1944

The ration register Glentilt Estate shows residence from May 1945 to December 1951.

In all they have drawn ration as mentioned above from the above-mentioned estates for wife and children but the names of the children are not given in the ration register

(4) That the applicant is possessed of an assured income .. Yes, monthly Income Rs. 399.50

(Sgd.) ————,
*Investigating Officer.*

No. 1. Application for Registration as a Citizen of Ceylon. 29.3.51. *Contd.*

(ii) Questionnaire relating to permanent settlement. 28.1.52

Form AD/6

**Questionnaire relating to Permanent Settlement**

1. What immovable property do you, your wife and minor children own—

(*a*) In India, Pakistan and elsewhere :

None

(*b*) In Ceylon :

None

2. What business or shares in companies registered in India or Pakistan or elsewhere other than Ceylon do you or your wife or minor children own, and what was the income from them in the last year or other period for which accounts have been prepared ?

None

(3) What visits have you, your wife and minor children paid to India and Pakistan since January 1, 1936/January 1, 1939, and what was the duration and purpose of each visit ?

Visited India in April, 1942 (one month)

To see mother.

E. C. Permit No. G. P. 48077.

*The following remittances made for the aged mother*

29.5.51—Rs. 70
26.6.51—Rs. 70
31.7.51—Rs. 70

Checked and verified
Initialled
Y. K.
(I. O.)

(Sgd.) P. K. DURAISAMY
*Signature of Applicant.*

Date : 28.1.52

No. 1.
Application for Registration as a Citizen of Ceylon
29.3.51.
*Contd.*

THE UPPER MASKELIYA ESTATES COMPANY, LIMITED

Brunswick Group,
Maskeliya,
August 18th, 1951

*To whom it may concern*

(iii) Certificate of Superintendent, Brunswick Group, Maskeliya 18.8.51

Mr. P. K. Duraisamy of Glentilt Estate, Maskeliya, was employed as Assistant Clerk on Brunswick Group from September 1934 to September 1944.

According to Mr. Duraisamy's statement, verified by the Estate records, he and his family had been in continuous residence on this estate, except for short visits to India for about 15 days once in two years.

(Sgd.) Superintendent.

---

(iv) Certificate of Superintendent, Roseland Estate, Bandarawela 12.3.45

Roseland Estate,
Bandarawela,
Ceylon,
12th March, 1945

This is to certify that Mr. P. K. Duraisamy has been working as Head-Clerk on this estate since August 1944.

He is neat and accurate in his work and has a very good knowledge of modern method of accounts and knows typewriting.

He leaves me at his own request.

(Sgd.)————

---

(v) Letter from M. G. E. de Silva to Commissioner 29.3.51

Glentilt Estate,
Maskeliya,
29th March, 1951

The Commissioner for the Registration
of Indian and Pakistani Residents,
P. O. Box No. 587,
Colombo.

Sir,

*Mr. P. K. Duraisamy and His Family*

I have the honour to inform you that Mr. P. K. Duraisamy came to Ceylon in 1931 and learnt work in the office of Brunswick Group, Maskeliya, and became an Assistant Clerk in the same office. He left for India in April 1932 and returned to the Estate in 1934 with his newly married wife, Mrs. D. Sellammal, who was then new to

No. 1. Application for Registration as a Citizen of Ceylon. 29.3.51. *Contd.*

Ceylon. From the year 1934 he and his family has been continually resident in Ceylon with the exception of short leaves which amounted to not more than one month on each occasion.

Mr. Duraisamy came to Glentilt Estate as Head Clerk in April 1945 and is resident on this Estate from that date with his family.

To the best of my knowledge and belief, all his children were born in Ceylon and the whole family is well-known to me from the time Mr. Duraisamy came to the Island.

It appears that Mr. Duraisamy and his family have got no interest in India but to settle down in Ceylon.

Will the authorities, therefore, please be kind enough to consider his matter and approve them as Ceylon citizens.

I am, Sir,
Your obedient servant,
(Sgd.) M. G. E. DE SILVA,
J. P., Maskeliya

---

(vi) Affidavit of P. K. Duraisamy 29.3.51

**Affidavit to confirm Marriage**

I, the undersigned, Puthuppatti Kitnan Duraisamy of Glentilt Estate, Maskeliya, do hereby sincerely, solemnly and truly declare and affirm that my marriage with Sellammal d/o late P. N. Nallathamby of T. Puthuppatti Village, Kannanur P. O., Musiri Taluk, Trichy District, S. India, was celebrated at T. Puthuppatti Village in the presence of Village Headman, Village Magistrate and our family Priest Pattakarar in April 1932.

(Sgd.) P. K. DURAISAMY,
*Signature of Declarant.*

Affirmed before me.
(Sgd.) M. G. E. DE SILVA,
J. P., Maskeliya
29th March, 1951.

Glentilt Estate,
Maskeliya,
Ceylon.
29th March, 1951

No. 1.
Application for Registration as a Citizen of Ceylon.
29.3.51.
*Contd.*

(vii) Letter from P. K. Duraisamy to Commissioner 29.3.51

REGISTERED

The Commissioner for Registration of Indian
and Pakistani Residents,
Colombo.

Sir,

*Application for Citizenship Rights for Mr. P. K. Duraisamy and Family*

I have the honour to enclose herewith—

1. Form ' D ' duly perfected and attested by a J. P. and U. M. for self and family,
2. Affidavit for marriage signed by a J. P. & U. M.,
3. Affidavit for children's date of birth,
4. Extracts from Glentilt Estate Birth Report for Rajeswari,
5. Extracts from Glentilt Estate Birth Report for Rajalakshmi,
6. Letter from a J. P. and U. M. who knows my family during the past 20 years in Ceylon,
7. Letter from my present employer, the Superintendent of Glentilt Estate, Maskeliya,

and request that you will be kind enough to register myself and my family members as Ceylon citizens, and send me the necessary certificates at your very earliest convenience.

For your information, I came to Ceylon alone, after having passed my Matriculation Examination in India in 1931 March and left for my marriage in 1932 April, stayed in India with my newly married wife, Mrs. D. Sellammal, until May 1934, and returned to Ceylon in June 1934 with my wife, from which time I am continually residing in Ceylon with my wife and children. My 4 children are all born in Ceylon.

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

No. 1. Application for Registration as a Citizen of Ceylon 29.3.51. *Contd.*

I hold credentials from several gentlemen of Estates (Superintendents) which indicate the continuous period of stay in Ceylon. As I understand that it will take many more months to obtain birth certificates for my children, I enclose affidavit and extracts.

Both myself and my wife were born in India.

Kindly acknowledge receipt.

Thanking you,

I am, Sir,
Your obedient servant,
(Sgd.) P. K. DURAISAMY

---

(viii) Extracts from Glentilt Estate Birth Report 29.3.51

THE MOCHA TEA COMPANY OF CEYLON, LTD.

Glentilt,
Maskeliya,
Ceylon.
29th March, 1951

*Extracts from Glentilt Estate Birth Report*

Report No. 53

Date and Place of Birth : Head Clerk's bungalow, on 3rd March, 1948.

Name of Child : Rajaletchumi

Sex : Female

Name of Father : Puthuppatti Kitnan Duraisamy

Name of mother : Sellammal, I.T.

Rank, &c. of Father : Head Clerk, I. T.

Were parents married : Yes.

(Sgd.)————
Superintendent.

No. 1.
Application for Registration as a Citizen of Ceylon.
29.3.51.
*Contd.*

MOCHA TEA COMPANY OF CEYLON, LTD.

Glentilt,
Maskeliya,
Ceylon.
29th March, 1951.

(ix) Extracts from Glentilt Estate Birth Report 29.3.51

*Extracts from Glentilt Estate Birth Report*

Report No. 11.

Date and Place of Birth : At Clerk's Bungalow on 22.12.1946.

Name of Child : Rajeswary.

Sex : Female.

Name of Father : Puthuppatti Kitnan Duraisamy

Name of Mother : Sellammal, I. T.

Rank, &c. of Father : Clerk, I. T.

Were parents married : Yes.

(Sgd.) ————,
Superintendent.

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**Affidavit**

(x) Affidavit of P.K. Duraisamy 29.3.51

I, the undersigned, Puthuppatti Kitnan Duraisamy (P. K. Duraisamy), presently employed as Head Clerk on Glentilt Estate, Maskeliya, do hereby sincerely, solemnly and truly declare and affirm that my two children (1) Ramakrishnan was born on the 23rd of October 1939 on Brunswick Group, Maskeliya, and (2) Rajambal was born on Dunnottar Division, Brunswick Group, Maskeliya, on the 21st August, 1941. I confirm that the above statements are, to the best of my knowledge and belief, correct.

(Sgd.)————
Re. 1 Stamp.

Sworn to before me.
(Sgd.) ————.
J. P. & U. M., Maskeliya.

Glentilt Estate,
Maskeliya,
29th March, 1951.

No. 1.
Application for Registration as a Citizen of Ceylon.
29.3.51.
*Contd.*

(xi) Letter from Superintendent, Glentilt, Maskeliya, to Commissioner. 29.3.51

THE MOCHA TEA COMPANY OF CEYLON, LTD.

Glentilt,
Maskeliya,
Ceylon.
29th March, 1951

The Commissioner for Registration of
Indian and Pakistanis in Ceylon,
Colombo.

Sir,

*Mr. P. K. Duraisamy and His Family*

My Head Clerk, Mr. P. K. Duraisamy, has applied for Ceylon citizenship both for himself and for his family.

I have the honour to inform you that, to the best of my knowledge and belief, Mr. Duraisamy and his family have been in Ceylon for the past 17 years continually and request that you will be kind enough to register them as Ceylon citizens.

Mr. Duraisamy is permanently employed on this Estate as Head Clerk and his total income per mensem amounts to, as detailed in the application form, Rs. 495. Besides this, he has got a share of Rs. 2,000 in Boutique No. 13, of Glentilt Bazaar, Maskeliya, and his wife is running a milk dairy from which she derives approximately Rs. 75 per mensem.

I hereby inform you that he has got all sources of income to become a Ceylon Citizen.

I am, Sir,
Your obedient servant,

(Sgd.)————
Superintendent.

---

(xii) Letter from Deputy Commissioner to P. K. Duraisamy 11.7.52

No. J. 514

Office of the Commissioner for the Registration of Indian and Pakistani Residents, P. O. Box 587.
Colombo 7, 11th July, 1952

*Registration of Indian and Pakistani Residents*

Sir,

With reference to your declaration dated 28th January, 1952, stating that you remitted sums of Rs. 70 in May, June and July 1951 to India, would you please state whether the remittances were made under the estate-group scheme and whether you declared yourself to be temporarily resident in Ceylon.

2. Please send me certified copies of the birth reports of your two elder children, Ramakrishnan and Rajambal.

No. 1. Application for Registration as a Citizen of Ceylon. 29.3.51. *Contd.*

I am, Sir,
Your obedient servant,
(Sgd.) R. T. RATNATUNGA,
Deputy Commissioner.

Mr. Puthuppatti Kitnan Duraisamy,
Head Clerk, Glentilt Estate,
Maskeliya.

---

Glentilt Estate,
Maskeliya,
Ceylon,
21st August, 1952.

(xiii) Letter from P. K. Duraisamy to Deputy Commissioner. 21.8.52

REGISTERED

The Deputy Commissioner,
Office of the Commissioner of Registration
of Indian and Pakistani Residents,
P. O. Box No. 587,
Colombo.

Sir,

*Registration of Indian and Pakistani Residents*

In reply to your letter No. J. 514 dated the 11th July, 1952, I have the honour to inform you as follows :—

(*a*) The remittances made to my aged mother and 2 crippled sisters in India, monthly Rs. 70, were on special permit obtained from the Exchange Controller, Colombo.

(*b*) Yes, the remittances were made through Estate Group Scheme, as the Controller of Exchange has authorised me to do so and according to the printed substances in the ' B ' forms, it is considered that I have declared as temporary residents in Ceylon.

For your information, I write to inform you that my aged mother and 2 crippled sisters were not willing to come over to Ceylon and settle down here and therefore it was necessary for me, as a son of an aged mother, who is bound to support her at her old age, remitted the sum mentioned monthly, and is still being remitted.

No. 1. Application for Registration as a Citizen of Ceylon 29.3.51. *Contd.*

2. In reply to second paragraph of your letter, please find attached :

(1) Original Birth Certificate No. 818 dated 14.8.1952 for my daughter Rajambal

(2) Extract copy of Birth Report book from Brunswick Estate for my son Ramakrishnan, attested by the present Superintendent Mr. P. E. Wright.

I trust that the above will meet with your approval.

3. I attach herewith 2 telegrams received yesterday, calling me to attend a wedding in India. The bride and bridegroom are close relatives to me and I would be grateful if you would be kind enough to let me know if I may be in a position to obtain a temporary visa to attend the wedding and if so the procedure that I should adopt.

As the marriage has been settled for the 28th instant, your reply per return post in the enclosed addressed and stamped envelope will be very highly appreciated.

Thanking you,
I am, Sir.
Your obedient servant,
(Sgd.) P. K. DURAISAMY

---

REGISTERED **Form 3**

No. J. 514

(xiv) Notice under Section 9 (1) of the Act. 9.9.52

THE INDIAN AND PAKISTANI RESIDENTS (CITIZENSHIP) ACT, No. 3 OF 1949

*Notice under Section 9 (1) of the Act*

To Puthuppatti Kitnan Duraisamy,
Head Clerk, Glentilt Estate, Maskeliya

I, Roland Tissa Ratnatunga, Deputy Commissioner for the Registration of Indian and Pakistani Residents, do hereby give you notice, under section 9 (1) of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, that I have decided to refuse your application under that Act dated 29th March, 1951, on the grounds specified in the Schedule hereto unless you show cause to the contrary within a period of three months from the date hereof by letter addressed to me.

(Sgd.) R. T. RATNATUNGA,
Deputy Commissioner for the Registration of Indian and Pakistani Residents.

P. O. Box 587,
Colombo,
9th September, 1952.

SCHEDULE

No. 1.
Application for Registration as a Citizen of Ceylon.
29.3.51.
*Contd.*

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

(Sgd.) R. T. RATNATUNGA,
Deputy Commissioner.

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(xv) Letter from P. K. Duraisamy to Deputy Commissioner 26.9.52

P. K. Duraisamy,
Chief Clerk.

Glentilt Estate,
Maskeliya,
Ceylon,
26th September, 1952

REGISTERED

The Deputy Commissioner for the Registration of
Indian and Pakistani Residents,
P. O. Box No. 587,
Colombo.

Sir,

*Reference No. J. 514*

In reply to your printed letter No. J. 514 dated the 9th September, 1952, I have the honour to inform you that the remittances made by me, viz., Rs. 70 monthly to India on special permit from the Controller of Exchange, were *purely meant* for *living expenses* of my mother and two crippled sisters who have *no other support than from me.*

As I have no interest whatsoever in India now and will have not to remit the amount to India after the expiry of the above three persons, mother being 65 years old, one sister is having convulsions and the other a chronic case, I have the honour to request that you will reconsider the position in my case and arrange for the necessary interview should you so require so that everything will be explained in person to you.

For your information, my experience in Ceylon from the year 1931 to date will be substantiated by credentials and also proofs can be obtained from my friend, Ceylonese, to the effect that I have no interest whatsoever.

Kindly acknowledge receipt of this letter.

I am, Sir,
Your obedient servant,
(Sgd.) P. K. DURAISAMY.

No. 1.
Application for Registration as a Citizen of Ceylon.
29.3.51.
*Contd:*

No. J. 514

Office of the Commissioner for the Registration of Indian and Pakistani Residents, P. O. Box 587, Colombo.
9th October, 1952

(xvi) Letter from Deputy Commissioner to P. K. Duraisamy 9.10.52

Sir,

*Ceylon Citizenship Act No. 3 of 1949*

I have the honour to refer to my notice under Section 9 (1) of the above Act and your reply thereto dated 26th September, 1952. The evidence adduced by you is not conclusive. An inquiry will, therefore, be held under Section 9 (3) (*a*), and you will be informed of the time and place of inquiry in due course.

I am, Sir,
Your obedient servant,
(Sgd.) R. T. RATNATUNGA
Deputy Commissioner

Mr. Puthuppatti Kitnan Duraisamy,
Head Clerk, Glentilt Estate,
Maskeliya.

---

(xvii) Letter from Deputy Commissioner to P. K. Duraisamy 9.1.54

REGISTERED POST

My No. J. 514

Department for the Registration of Indian and Pakistani Residents, Fruit Hill, Hatton, 9th January, 1954.

Sir,

I have the honour to inform you that I have fixed your application for registration as a citizen of Ceylon under Act, No. 3 of 1949, for inquiry under Section 9 (3) . . . . at the Office of the Deputy Commissioner, Fruit Hill, Hatton . . . . on 25th January, 1954.

2. Please attend at 9.30 a.m. with such documents and witnesses as you rely on to prove that you have complied with the requirements stated overleaf. In general, no certificates issued after 31.12.1948 will be received in evidence unless the signatories are present for examination on oath or affirmation.

3. If you desire summons on any witness, you should apply to me for the same within a week from today furnishing the name and

address in full of such person. In issuing any summons, I shall indicate that the witness need attend only if expenses are paid to him direct by you.

No. 1. Application for Registration as a Citizen of Ceylon 29.3.51 *Contd:.*

I am, Sir

Your obedient servant,
(Sgd.) V. D. ADHIHETTY,
Deputy Commissioner

Mr. Puthuppatti Kitnan Duraisamy,
Head Clerk, Glentilt Estate,
Maskeliya.

The requirements referred to :—

that you had permanently settled in Ceylon : the contrary is indicated by the fact that, in seeking to remit money abroad, you declared yourself to be temporarily resident in Ceylon.

(Sgd.) V D. ADHIHETTY
Deputy Commissioner

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*True Copy.*

(xviii) Extract from Brunswick Estate Birth Report 22.7.52

REPORT OF BIRTH ON AN ESTATE

No. 18

25th October, 1939

Birth on the Brunswick Estate in the Medical District of Maskeliya.

| | | |
|---|---|---|
| 1. Date and Place of Birth | .. | 24th October, 1939. In Asst. Clerk's Quarters |
| 2. Name of Child | .. | Ramakrishnan |
| 3. Sex .. | .. | Male |
| 4. Name of the Father | .. | Puthupatti Kitnan Doraisamy |
| 5. Name and Race and age of the Mother | | Nallathamby Sellammal, Indian Tamil |
| 6. Rank or Profession and Race of the Father | | Asst. Clerk on Brunswick Estate, Indian Tamil |
| 7. Were Parents married ? | .. | Yes, according to their rites and customs |

No. 1. Application for Registration as a Citizen of Ceylon. 29.3.51. *Contd.*

| | |
|---|---|
| 8. Signature of both Parents if child is illegitimate (see note in cage 4) | To be filled only in case of illegitimate birth |
| 9. Name in full or the Kangany under whom the Father and mother work | To be filled only in the case of Labourer<br>do. |
| 10. Was Birth reported to the Superintendent by the Kangany, and if so, when | Yes, on 24th October, 1939 |

---

I, Victor Henry George Halliday, do hereby declare the above to be a true and correct statement. 10

Witness my hand at Brunswick this 25th day of October, 1939.

(Sgd.) G. V. HALLIDAY.

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I, Peter Edwards Wright, Superintendent of Brunswick, do hereby certify the above to be a true copy of the report.

22/7/1952. (Sgd.) P. E. WRIGHT.

## No. 2

## Order of the Deputy Commissioner

No. 2
Order of the Deputy Commissioner
25.1.54

Application No. J. 514
9.30 a.m.
25th January, 1954.

*Applicant Mr. Puthuppatti Kitnan Duraisamy present.*

I inform applicant that the point for inquiry is whether he had permanently settled in Ceylon: the contrary is indicated by the fact that in seeking to remit money abroad, he declared himself to be temporarily resident in Ceylon.

*Applicant: P. K. Duraisamy Clerk, Glentlilt Estate, Maskeliya, age 42 years, affirmed states:*

I came to Ceylon first in 1931. I was first a learner in Brunswick Group and then I was appointed an assistant clerk in April 1932. In May 1932, I went back to India and got married immediately after I went there. I came back to Ceylon with my wife in June 1934 and returned to the same estate in 1934. From September 1934 to August 1944, I was an assistant clerk on the same estate. It is stated in the Superintendent's certificate, dated 18th August, 1951, that I was continuously resident from 1934 September to 1944 September, except for short visits to India for about 15 days once in two years. My visits stated in this certificate are not correct. The actual visits I paid to India during this period are in June 1939, May 1942 and September 1949. From the time I came to Ceylon in 1939 I have paid 6 visits to India up to date. I came as Head Clerk to Glentilt Estate in April 1945 and I am resident on that estate up to date My children were all born in Ceylon. My father died in August 1933. My mother and one sister are now in India. My mother and the crippled sisters are living in my father's house. On the death of my father I inherited a share of his property. The property is worth about 3 to 4,000 rupees. My mother and sister are dependent on me. From 1935 onwards I have been supporting my mother and sister. Before the Exchange Control I used to send Rs. 25 per month for the maintenance of my mother and sister. I applied to the Controller for a permit in December 1949. The Controller sent me a General Permit to the Superintendent of the estate, and informed me that I had to remit money through the Estate Group Scheme. Under this permit I sent money to India through the Estate Group Scheme from 1950 March about Rs. 50 a month. I had a renewal permit from 7th April, 1951, authorising me to send Rs. 70 a month. Under this permit I sent three sums of Rs. 70 a month in May 1951, June 1951 and in July 1951. I signed 'B' Forms under the Estate Group Scheme for the various sums I had remitted to India since 1950 through the Estate Group Scheme, and for each remittance I perfected a 'B' Form wherein I

No. 2.
Order of the Deputy Commissioner 25.1.54.
*Contd.*

made a declaration that I was temporarily resident in Ceylon. I ceased sending money from July 1951 when I came to know definitely that remitting money will affect my Citizenship rights through the Estate Group Scheme. It is a fact that I declared myself temporarily resident in Ceylon for the purpose of remitting money to India. About March 1951 I had invested two thousand rupees in the business of a boutique in the Glentilt Bazaar. There were three other shareholders in the shop. From 1952 July I became the sole owner of this business. I am negotiating to buy the building in which this business is carried on for a sum of Rs. 8,000 but no deed has been executed in my favour yet.

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*Witness : Mr. M. G. de Silva, J.P. affirmed : Age 49, resident at Glentilt, Maskeliya.*

I know the applicant in this case. I know him since 1934. The applicant is negotiating to buy a boutique in Maskeliya town. He had no property about March 1951, about the time he made this application for registration. About 1952 or 1953 he acquired a share in the business of Rajaletchumy and from 1954 he became the sole owner of this business. To my knowledge he had no other property in Ceylon. He has told me that he is negotiating now to purchase the building where this business is carried on.

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*Witness : Mr. D. J. Weerasooriya, age 46, affirmed, Occupation tea-maker, Maskeliya Estate, Maskeliya.*

I know the applicant from the time he was at Brunswick Group. The applicant told me that he has a share in a textile shop in Glentilt Bazaar. I have no personal knowledge but the applicant is reputed to have a share in this business. He also told me that he was making negotiations to buy the building which is situated at Glentilt Bazaar and where this textile business is carried on.

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Applicant : At present my eldest son is being educated in Jaffna and it is my intention to send him to Madras for higher education.

(Sgd.) V. D. ADHIHETTY,
Deputy Commissioner.

*Order :*

On the evidence before me I hold that the applicant was born in India. He came to Ceylon in 1931 and learned work at Brusnwick Group. He returned to India in 1932 and got married there. He came back to Ceylon in September 1934 with his wife and got employed on the same estate. According to the evidence he has paid six visits to India. According to the certificate which the applicant produced to the Investigating Officer from the Superintendent of Brunswick Group on page 11 it is stated that the applicant paid

short visits to India for about 15 days once in two years. In April 1945 the applicant was appointed Head clerk of Glentilt Estate and he and his family are yet resident there.

Applicant's domicile of origin is clearly India and there is a presumption that this domicile continues, unless the applicant has adopted a Ceylon domicile of choice, that is, in other words, he had permanently settled in Ceylon. The burden of proof that he had changed his Indian domicile or, in other words, that he had permanently settled in Ceylon as required by section 6 read with Section 22 of the Act lies on him. In rebuttal of the presumption referred to the applicant has proved (*a*) Long and continuous residence in Ceylon from 1934 up to date (*b*) that his children were born in Ceylon and (*c*) that he had invested a sum of rupees two thousand in the business of a boutique in Glentilt Bazaar. As regards (*a*) long residence of a person in a foreign country does not necessarily prove that he has permanently settled in that country. For instance, the majority of European planters at the end of their working careers go back to their homes without a change of domicile. The applicant's long residence is merely due to economic reasons. As regards (*b*) the fact that all his children were born in Ceylon is a mere concommitant of his residence in Ceylon. In regard to 'C' I should think that this is proof of his starting to do business in Ceylon apart from his employment. The applicant has admitted that he has made several remittances to India from March 1950 to July 1951 through the Estate Group Scheme, by perfecting 'B' Forms wherein he declared that he was temporarily resident in Ceylon. The applicant is an educated man and he knew the implications of declaring that he was temporarily resident in Ceylon.

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

(Sgd.) V. D. ADHIHETTY,
Deputy Commissioner.

Office of the Deputy Commissioner for the Registration of Indian and Pakistani Residents,
Fruit Hill, Hatton, 25th January 1954.

(Sgd.) P. ADHIHETTY,
Deputy Commissioner.

Hatton, 12th May 1954.

No. 3
Petition of Appeal to the Supreme Court 24.4.54

## No. 3

## Petition of Appeal to the Supreme Court

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Application No. J. 514

In the matter of an application made under Section 7 of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949.

and

In the matter of an Appeal under Section 15 of the Indian and Pakistani (Citizenship) Act, No. 3 of 1949.

Puthupatti Kitnan Duraisamy of Glentilt Estate, Maskeliya.....*Applicant-Appellant.*

The Commissioner for the Registration of Indian and Pakistani Residents..... .....*Respondent.*

On this 24th day of April, 1954.

To :

The Honourable the Chief Justice and the other Judges of the Supreme Court of the Island of Ceylon.

1. On 29th March, 1951, the appellant above-named made an application under the Indian and Pakistani (Citizenship) Act, No. 3 of 1949 for the registration of the appellant and his wife and four children named in the said application as citizens of Ceylon.

2. On 25th January, 1954, inquiry was made on the order of the espondent into the question whether applicant had complied with the requirements mentioned in his letter No. J. 514 of 9·1-54 copy of which marked P1 is filed herewtih.

3. After inquiry on 23·1-54 order was delivered to the appellant disallowing his application on the ground that the appellant had declared that he was temporarily resident in Ceylon in seeking to remit money abroad.

4. Being dissatisfied with the said order the appellant begs to appeal to Your Lordships' Court on the following, among other grounds, which will be urged at the hearing of this appeal :—

(*a*) the said order is contrary to law and against the weight of evidence led by the appellant at the said inquiry

(*b*) the declaration referred to in the said Order was not a declaration made by the appellant when seeking to remit money abroad.

In the declaration made by appellant when applying to remit money abroad the appellant had declared that he had acquired a Ceylon domicile and applied for registration as a citizen of Ceylon.

(*c*) the declaration referred to in the said Order was only part of an administrative arrangement adopted by the Department of Exchange Control which compelled all residents on Estates to remit money abroad only through the Estate Superintendent.

(*d*) the declaration referred to in the said Order was a requirement which the Department of Exchange Control has imposed and waived alternatively for the purposes of Exchange Control only. Such declaration is not relevant to the question whether the appellant was permanently settled in Ceylon.

(*e*) the circumstances in and the purpose for which the declaration was made have not been considered in determining what evidential value should be attached to the said declaration.

(*f*) the declaration referred to in the said Order is not conclusive on the question whether or not the appellant had permanently settled in Ceylon. The question whether the appellant had permanently settled in Ceylon should have been decided on a consideration of all the evidence available.

Wherefore the appellant prays that Your Lordships' Court be pleased :

(*a*) to set aside the Order disallowing the appellant's application.

(*b*) to order that the appellant, his wife and children be registered as citizens of Ceylon under section 16 of the Indian and Pakistani (Citizenship) Act No. 3 of 1949.

(*c*) for costs of this appeal and such other relief as to Your Lordships' Court may seem meet.

(Sgd.) P. K. DURAISAMY,
Applicant-Appellant.

No. 4
Order of the
Supreme Court.
6.8.54

## No. 4

## Order of the Supreme Court

*S. C. 517/1954. Application No. J 514*

Puthupatti Kitnan Duraisamy of Glentilt Estate, Maskeliya ..... Applicant-Appellant.

Vs.

The Commissioner for the Registration of Indian and Pakistani Residents ..... Respondent.

*Present :* Fernando A. J.

*Counsel :* Walter Jayawardene for the Appellant 10

Thiruchelvam C. C. for the Respondent.

*Argued on :* 23rd and 30th July, 1954.

*Decided on :* 6.8.54.

FERNANDO A. J.

THE appellant in this case was an applicant for registration as a citizen of Ceylon under the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, and his appeal is against the refusal of his application by the Deputy Commissioner appointed under the Act.

The only persons eligible to apply for registration under the Act 20 are " Indian and Pakistani residents ", an expression which is defined in S 22 of the Act.

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

Counsel on both sides appeared to agree that, having regard to the other requirements in the Act as to a minimum period of residence in 30 Ceylon and as to the residence, together with an applicant, of his wife and minor children, the requirement of " permanent settlement " imposed by S 22 calls mainly for proof of *an intention to settle permanently in Ceylon.*

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

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

No argument was presented to me as to the meaning or effect of the requirement that the applicant should have *emigrated* from India but it seems to me that this requirement may also be of material importance.

I understand this to be a case of first instance. Moreover, the questions which arise are of doubt and difficulty and are of importance as affecting the interests of the large number of persons who claim to be residents within the meaning of the Act. I am, therefore, of opinion that the questions should be determined more authoritatively than by the decision of a single Judge.

I would accordingly reserve the case for the decision of two or more judges according as My Lord the Chief Justice may determine.

H. N. G. FERNANDO,
Acting Puisne Justice.

Honourable the Chief Justice
Submitted for orders
(Sgd.) N. NAVARATNAM.
Deputy Registrar, S. C.
10 9/54.

Please fix before a Bench of two Judges.

(Intd.) A. R.
10/9.

No. 5
Judgment of the Supreme Court.
18.2.55

## No. 5

## Judgment of the Supreme Court

*S. C. No. 517 of 1954. Application No. J. 514*

Kitnan Duraisamy .....Applicant-appellant.

vs.

The Commissioner for the Registration of Indian and Pakistani Residents.....Respondent.

*Present :* Gratiaen J. and Sansoni J.

*Counsel :* H. V. Perera Q. C. with Walter Jayawardene and S. P. Amarasingham for the Appellant.

T. S. Fernando Q C. acting A. G. with M. Tiruchelvam D. S. G. H. A. Wijemanne C. C. and R. S. Wanasundere C. C. for the Respondent.

*Argued on :* 7th and 8th February, 1955.

*Delivered on :* 18·2·55.

THIS is an appeal by an Indian Tamil against an order refusing to register him and his wife and minor children as citizens of Ceylon under the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949. The Judgment of this Court upon a reference by Fernando A.J. is as follows :—

Sections 4 and 5 of the Citizenships Act No. 18 of 1948 and Section 4 (1) (*a*) of the Ceylon (Parliamentary Elections) Amendment Act, No. 48 of 1949 had the effect of disfranchising many Indian Tamils (and indirectly their descendants) in spite of their long residence in Ceylon. In enacting these laws however, Parliament was merely exercising " the perfectly natural and legitimate function of the legislature of a country to determine the composition of its nationals" on *bona fide* considerations which did not violate Section 29 of the Ceylon (Constitution and Independence) Order-in-Council 1946 and 1947 *Kodakan Pillai vs. Mudanayake* (1953) 54 NLR 433. The complaint of unfair discrimination against a community as such was negatived, *inter alia*, by the provisions of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, whereby an Indian Tamil could by application obtain citizenship by registration

and thus protect his descendants, "*provided that he had a certain residential qualification*" and was "*sufficiently connected with the Island*". The Judicial Committee pointed out in this connection that the migratory habits of most Indian Tamils in this island were facts "directly relevant to the question of their suitability as citizens of Ceylon".

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

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

> "22. An Indian or Pakistani resident means a person (*a*) whose origin was in any territory which immediately prior to the passing of the Indian Independence Act 1947 of the Parliament of the United Kingdom formed part of British India or any Indian State and (*b*) who has emigrated therefrom and *permanently settled in Ceylon.*
>
> and includes (1) a descendant of any such person and
>
> (2) any *person, permanently settled in Ceylon,* who is a descendant of a person whose origin was in any territory referred to in the preceding paragraph (*a*)."

The preliminary requirement as to "origin" in paragraph (*a*) presents no difficulty.

It has been suggested that an applicant must always prove that he "emigrated" from his country of origin in the sense that he had left it from the very outset with a firm resolve to abandon his domicile there. This could not have been the intention of an enactment designed to achieve a realistic purpose. Be that as it may, the language of the amending Act has virtually dispensed with the qualification of having "emigrated" in the strict sense suggested. An applicant who cannot come within the ambit of paragraph (*a*) is now invariably "included" in the definition because his father was of Indian or Pakistani "origin"; so that "emigration" has ceased to be, even if it ever was, a vital qualification.

No. 5. Judgment of the Supreme Court. 18.2.55. *Contd.*

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

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

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

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

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

(5) he must " clearly understand " the statutory consequence of registration *Section 6 (2) (iv)*

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

The requirement that the applicant must establish a minimum period of residence is easily explained. " *A presumption of domicil grows in strength with the length of the residence* "..... A residence may be so long and continuous as to raise a presumption that is rebuttable only by actual removal to a new place ". *Cheshire's Private International Law* (4th edition) page 159. Similarly, the fact that a man's immediate family shares his connection with the country of disputed domicil is an extremely relevant factor for consideration. The imposition of these statutory standards relieves the investigating authority of the duty of deciding by mere legal inference whether an applicant's residence bears in the circumstances of any particular case a sufficient degree of permanency. Equally significant is the requirement that an applicant "clearly understands" the serious consequences which automatically flow from registration under the Act—namely (1) a statutory renunciation of the man's

former *political status* and (2) the change in *civil status* which automatically results under the rules of private international law from a change of domicil. Here again the legislature has laid down in positive terms another well-established test of permanency (instead of leaving the applicant's intentions to be judicially ascertained by inference).

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

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

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

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

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

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

No. 5.
Judgment of the Supreme Court.
18.2.55.
*Contd.*

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

It is not difficult to find a logical explanation, indeed a justification, for Parliament's decision to prescribe its own tests of " permanency ". In recent years there has been a considerable criticism of the difficulties involved in the function of deciding judicially (but without the aid of statutory standards) whether or not a man may be presumed to have acquired a domicil of choice in the country in which he actually resides. A special Committee appointed by the Lord Chancellor of England in 1952 published a report last year recommending the adoption of certain simple rules contained in a Draft Code (reproduced in the 3rd edition of *Schmitthof's ' The English Conflict of Laws'* pages 491–493). Until these or similar reforms are introduced, the Courts must continue " to investigate a man's actual state of mind rather than rest content with the natural inference of his long continued residence, in a given country ". *Cheshire* (supra) page 162.

By way of contrast, the administrative machinery provided by the Act has been admirably designed by Parliament to eliminate the tantalising problems which beset the Courts in deciding issues of " domicil ". An application for registration is submitted in a prescribed form in which the applicant sets out the particulars on which he relies to establish his special residential qualifications and his compliance with the other onerous conditions precedent to registration. The facts relied on are in the first instance verified by an investigating officer (not necessarily required by the Act to possess legal qualifications ) who reports thereon to the Commissioner (who significantly is himself not required to possess legal qualifications). If a *prima facie case for registration* has been established, the application is in due course allowed, unless an objector can show that " a *prima facie* case " does not in fact exist. Alternatively, the applicant has a further opportunity to establish " a *prima facie* case " at an inquiry held by the Commissioner (or one of his

Deputies) "free from all the formalities and technicalities of the rules of procedure applicable to a court of Law". In these proceedings, the Commissioner though "subject to the general direction and control of the Minister" (Section 18) nevertheless performs a judicial function which is confined to the impartial ascertainment (free from administrative direction of any kind) of the uncomplicated questions of fact specified by the Act. The legislative plan works well and expeditiously so long as it is clearly realised that there is no super-added responsibility to investigate extremely difficult mixed problems of fact and law which in most cases would present formidable obstacles even to an experienced Judge trained in the law. Those latter difficulties have been described as follows in *Cheshire* (supra) at page 155 :—

> "Once the relevance of vague hopes or dim expectations of a return to the fatherland is admitted, there is no end to the detail that the judge must consider. Often he must review the whole history of a man's life and examine such elusive factors as his fears and aspirations, his hopes and prejudices, his declarations both written and spoken. It follows that in many cases a practitioner will experience great difficulty in advising his client upon his place of domicil until it has been judicially determined, for the puzzle will be to predict what weight will be given by a judge to the various factors upon which the question turns. There is no common standard, since a fact which appeals to one mind as being of decisive significance seems of trivial importance to another. The desire of Mr. Winans (*of Winans vs. Attorney-General*) to return to America in order to construct anti-British ships impressed Lord MacNaghten, but was discarded by Lord Lindley as immaterial. *The result is that a man's domicil may remain uncertain throughout his life*".

Fortunately the Commissioner and his Deputies lacking as they do the judicial experience and equipment of a MacNaghten or a Lindley need not stray as assistants into the complex field of human psychology in order to determine the real intentions of an applicant for registration. But they have no doubt been selected for office because they are sufficiently competent to decide whether an applicant has satisfied the practical but uncomplicated tests prescribed by the Act.

In this view of the matter, the appellant was clearly entitled to succeed in his application. He and his wife have resided in Ceylon since 1934, Their minor children live with them and attend school in this country. He has always enjoyed the benefits of fixed employment in Ceylon ; his modest savings have been invested here and he has no ties with India except those of natural affection for his widowed mother and his two sisters, (whom he dutifully wishes

No. 5. Judgment of the Supreme Court. 18.2.55. —*Contd.*

to support). He has ultimately made a genuine decision to cement his long association with this country by claiming the privileges of Ceylon citizenship with a clear understanding of the consequences which will result from registration. We can conceive of no better example of the kind of " suitable " person whom Parliament had in mind when the Act passed into law. He has satisfied all the onerous statutory conditions prescribed, and the circumstance that, in a very different context, he incorrectly described his residence in this country as " temporary " in order to facilitate (in violation of the " exchange control " regulations) the forwarding of the usual subsistance allowances to his mother and his sisters abroad cannot disqualify him. Indeed, even if the question had arisen for determination by an " understanding " judge on the issue of domicil, this isolated circumstance would have carried no weight in view of the other compelling factors established in his favour. The decision appealed from seems to us to have been reached in accordance with some *pre-determined departmental formlula* (evidenced by identical preliminary orders made by different officers of the Department in different areas) which is not warranted by the Act. We allow the appeal and direct the Commissioner to take appropriate steps under Section 14 (7) of the Act, on the basis that a *prima facie* case for registration has been established to the satisfaction of this Court. The Appellant is entitled to the costs of this appeal.

(Sgd.) E. F. N. GRATIAEN,
Puisne Justice.

(Sgd.) M. C. SANSONI,
Puisne Justice.

## No. 6

No. 6
Decree of the
Supreme Court
18.2.55

## Decree of the Supreme Court

*S. C. No. 517/'54. Application No. J. 514.*

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

Pathupati Kitnan Duraisamy of Glentilt Estate, Maskeliya .....*Applicant-Appellant.*

*Vs.*

The Commissioner for the Registration of Indian and Pakistani Residents.....*Respondent.*

Counsel for Appellant: Mr. Advocate H. V. Perera, Q.C. with Mr. Advocate Walter Jayawardene and Mr. Advocate S.P. Amarasingham.

Counsel for Respondent: Mr. Advocate T. S. Fernando, Q.C. Acting Attorney-General with Mr. Advocate M. Thiruchelvam, D.S.G., Mr. Advocate H. A. Wijemanne Crown Counsel and Mr. Advocate R. S. Wanasundera, C.C.

THIS case having come before the Hon. E. F. N. Gratiaen and the Hon. M. C. Sansoni, Puisne Justices, of this Court, for hearing and determination.

It is considered and adjudged that this appeal be and the same is hereby allowed and the Commissioner is directed to take appropriate steps under Section 14(7) of the Act on the basis that a *prima facie* case for registration has been established to the satisfaction of this Court. The appellant is entitled to the costs of this appeal.

Witness the Hon. Sir Alan Percival Rose, Kt. Q.C., Chief Justice, at Colombo, the 18th day of February in the year One thousand Nine hundred and Fifty-five and of Our Reign the Fourth.

(Sgd.) W. G. WOUTERSZ,
Deputy Registrar. S.C.

No. 7
Application for conditional leave to appeal to the Privy Council.
16.3.55.

## No. 7

## 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 made under Section 7 of the Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949.

And

In the matter of an appeal under Section 15 of the Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949.

Appeal No. 517 of 1954
Indian & Pakistani Residents (Citizenship) Act No. 3 of 1949.

Pathupatti Kitnan Duraisamy of Glentilt Estate, Maskeliya .....*Applicant-Appellant.*

Vs.

The Commissioner for the Registration of Indian and Pakistani Residents, Colombo....*Respondent.*

In the matter of an application for conditional leave to appeal to Her Majesty the Queen in Council.

Herbert Ernest Tennekoon, Commissioner for the Registration of Indian and Pakistani Residents, Colombo..... *Respondent-Petitioner.*

Vs.

Pathupatti Kitnan Duraisamy of Glentilt Estate, Maskeliya .....*Appellant-Respondent.*

On this 16th day of March, 1955

*To :*

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

The Petition of the Commissioner for the Registration of Indian and Pakistani Residents, the Respondent-Petitioner abovenamed appearing by Behram Kaikhushroo Billimoria and his assistant Abdul Hameed Mohamed Sulaiman, his Proctors states as follows:

No. 7. Application for conditional leave to appeal to the Privy Council. 16.3.55. —*Contd.*

1. That upon an appeal preferred by the Appellant-Respondent to this Honourable Court against an order of the Deputy Commissioner for Registration of Indian and Pakistani Residents dated the 25th day of January 1954 refusing an application for registration of the Appellant-Respondent his wife and four children as citizens of Ceylon this Honourable Court by its judgment and order pronounced on the 18th day of February 1955 allowed the said appeal.

2. That feeling aggrieved by the said judgment and order of this Honourable Court, the abovenamed Respondent-Petitioner is desirous of appealing therefrom to Her Majesty the Queen in Council.

3. That the question involved in the appeal is one which by reason of its great general or public importance or otherwise ought to be submitted to Her Majesty the Queen in Council for decision.

4. That notice of the intended application for leave to appeal was served on the Appellant-Respondent on the 26th day of February 1955 in terms of Rule 2 of the Rules in the Schedule to the Appeals (Privy Council) Ordinance Chapter 85 as appears from the Affidavits P1 and P2, annexed hereto.

WHEREFORE the Respondent-Petitioner prays for conditional leave to appeal against the said judgment of this Court dated the 18th day of February 1955, to Her Majesty the Queen in Council.

(Sgd.) B. K. BILLIMORIA,
Proctor for Respondent-Petitioner.

No. 8, Judgment of the Supreme Court granting Conditional Leave to Appeal to the Privy Council. 20.12.55

## No. 8

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

*Application No. 150*

In the matter of an Application for Conditional Leave to Appeal to the Privy Council in *re* an Application made under section 7 of the Indian and Pakistani Residents (Citizenship) *Act No. 3 of 1949.*

*Present :* Basnayake, A.C.J., and Gratiaen, J.

*Counsel :* M. Tiruchelvam, Deputy Solicitor-General, with V. Tennekoon, Crown Counsel, for the Respondent-Petitioner.

Walter Jayawardena with S. P. Amerasingham for Appellant-Respondent.

*Argued on :* 16th and 17th June, 1955.

*Decided on :* 20th December, 1955.

*Basnayake, A. C. J.*

AT the conclusion of the argument of this application for conditional leave to appeal to the Privy Council, we made order allowing the application and reserved our reasons to be delivered on a later date.

It is common ground that the question involved in the appeal is one which by reason of its great general or public importance, ought to be submitted to Her Majesty the Queen in Council for decision.

The only question in dispute was whether an appeal under section 15 of the Indian and Pakistani Residents (Citizenship) Act, No. 3, of 1949 (hereinafter referred to as the Act) comes within the ambit of section 3 of the Appeals (Privy Council) Ordinance (hereinafter referred to as the Ordinance). That section reads :

> " From and after the commencement of this Ordinance the right of parties to civil suits or actions in the Supreme Court to appeal to His Majesty in Council against the judgments and orders of such Court shall be subject to and regulated by—
>
> (*a*) the limitations and conditions prescribed by the Rules set out in the Schedule, or by such other Rules as may from time to time be made by His Majesty in Council, and

(*b*) such general Rules and Orders of Court as the Judges of the Supreme Court may from time to time make in exercise of any power conferred upon them by any enactment for the time being in force ".

Learned Counsel for the respondent opposed the application on the ground that the judgment from which the applicant sought to appeal was not a judgment in a " civil suit or action in the Supreme Court ". He relied on certain decisions of this Court in which applications for leave to appeal were refused. I shall presently refer to those decisions. But before I do so I think I should refer to the relevant statute law by which the right of appeal to the Privy Council has been granted and regulated since its grant.

The right of appeal to the Privy Council was granted by section 52 of the Charter of Justice of 1833 (hereinafter referred to as the Charter), the relevant portion of which reads as follows :—

" And we do further grant, ordain, direct and appoint that it shall be lawful for any Person or Persons being a Party or Parties to any Civil Suit or Action depending in the said Supreme Court to appeal to Us, Our Heirs and Successors in Our or Their Privy Council against any final Judgment, Decree, or Sentence, or against any Rule or Order made in any such Civil Suit or Action, and having the effect of a final or definitive Sentence ".

The exercise of that right was at first regulated by the Charter itself and later, till their repeal by the Ordinance, by section 42 of the Courts Ordinance and section 779 of the Civil Procedure Code. Finally in 1909, when the Ordinance was enacted in order to bring about uniformity of practice in all the Colonies, the provisions of the Courts Ordinance and the Civil Procedure Code were repealed. The history of the legislation shows that the Ordinance was merely re-enacting the already existing legislation in a slightly different form and in a form capable of easy revision of the procedural aspects of it.

An examination of the decisions of this Court as to the meaning and scope of the words " civil suit or action " in the Charter, the legislation that was repealed by the Ordinance, and the Ordinance itself, shows that the question that arises for decision is not entirely free from doubt. It also reveals that there are two conflicting lines of decisions. I shall first refer to the line of decisions on which Counsel for the respondent relies.

In the case of *Sockalingan Chetty v. Manikam* [1], this Court, following the decisions of *In re Ledward* [2], *In re Keppel Jones* [3], and *In re De Vos* [4], held that there was no right of appeal to the Privy Council from a judgment of the Supreme Court in insolvency proceedings. In *Soertsz v. Colombo Municipal Council* [5], it was held that there was

(*1*) *32 N. L. R. 65*
(*2*) *3 Lorenz 234 (1859)*
(*3*) *(1877) Ram 379*
(*4*) *(1899) 2 Browne 331*
(*5*) *32 N. L. R. 62*

No. 8. Judgment of the Supreme Court granting Conditional Leave to Appeal to the Privy Council. 20.12.55. —*Contd.*

no right of appeal to the Privy Council from a judgment of the Supreme Court on a case stated under section 92 of the Housing and Town Improvement Ordinance. That decision was followed in the case of *R. M. A. R. A. R. R. M. v. The Commissioner of Income Tax* [6], and *Settlement Officer v. Vander Poorten et al* [7]. In the latter case it was held that no appeal lies as of right to the Privy Council from an order made by the Supreme Court dismissing an appeal from an order of the District Court made in the exercise of a special jurisdiction vested in it under the Waste Lands Ordinance.

I shall next refer to the line of decisions on which the petitioner relies. The first of that line of decisions if *Subramaniam Chetty v. Soysa* [8], where it was held that proceedings under section 282 (2) of the Civil Procedure Code to have a sale in execution set aside on the ground of a material irregularity in conducting it, was a civil suit or action for the purpose of the Ordinance. The next is the case of *In re Goonesinha* [9] where it was held that an application for a writ of certiorari, being an application for relief or remedy obtainable through the Court's power or authority, constitutes an action and comes within the ambit of the Ordinance. In the case of *Controller of Textiles v. Mohamed Miya* [10], a similar application for leave to appeal to the Privy Council was granted, but the question whether proceedings for a writ of certiorari come within the ambit of the expression " civil suit or action " does not appear to have been decided. But in the later case of *G. S. N. Kodakan Pillai v. P. B. Mudanayake* [11] another application for leave to appeal from an order granting a writ of certiorari, it was held that such proceedings came within the scope of the expression " action ". The last of this line of cases is *Attorney-General v. V. Ramaswami Iyengar* [12] where it was held by my brother Gratiaen that a judgment of this Court in an appeal under section 43 of the Estate Duty Ordinance is a judgment in a civil suit or action.

In this state of the decisions of this Court I formed the view, though not without hesitation, that the better course would be to grant the leave applied for. I was influenced largely by two considerations—one being that leave has been previously granted by this Court in the case of an appeal under this very Act, in the case of *Badurdeen v. Commissioner for the Registration of Indian and Pakistani Residents* [13], without objection being taken either in this court or in the Privy Council, and the other that the question that arises for decision is admittedly one which by reason of its great importance should be submitted to Her Majesty in Council for decision.

(Sgd.) HEMA H. BASNAYAKE,
Acting Chief Justice.

(6) *37 N. L. R. 447*
(7) *43 N. L. R. 436*
(8) *25 N. L. R. 344*
(9) *44 N. L. R. 75*
(10) *49 N. L. R. 105*
(11) *54 N. L. R. 350*
(12) *55 N. L. R. 572*
(13) *52 N. L. R. 354*

No. 8. Judgment of the Supreme Court granting Conditional Leave to Appeal to the Privy Council. 20.12.55. —*Contd.*

In the matter of an Application for Conditional Leave to Appeal to the Privy Council in *re* an Application made under section 7 of the Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949.

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*S. C. Application No. 150*

H. E. Tennekoon, Commissioner for the Registration of Indian and Pakistani Residents.....*Respondent-Petitioner.*

vs.

P. K. Duraiswamy.....*Appellant-Respondent.*

*Present :* Basnayake A. C. J. and Gratiaen J.

*Counsel :* M. Tiruchelvam, Deputy Solicitor-General with V. Tennekone C. C. for the Respondent-Petitioner.

Walter Jayawardene with S. P. Amerasingham for the Appellant-Respondent.

*Argued on :* 16th and 17th June, 1955.

*Decided on :* 20th December, 1955.

GRATIAEN J :

AT the conclusion of the argument, we over-ruled the objection that the order of this Court dated 18th February, 1955, under the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949 (as amended in 1950) had not been made in " a civil suit or action ". It was conceded that the question involved in the appeal was " of great general or public importance. " Accordingly, we exercised our discretion in favour of the petition under Rule 1 (B), and granted conditional leave to appeal to Her Majesty in Council. I shall now set out my reasons for holding that the proceedings before this Court under the Act constituted a " civil suit or action " within the meaning of the Appeals (Privy Council) Ordinance.

The Deputy Commissioner had refused the respondent's application for the registration of himself, his wife and minor children as citizens of Ceylon under the Act. The respondent appealed to this Court against the Deputy Commissioner's order and the present petitioner

No. 8. Judgment of the Supreme Court granting Conditional Leave to Appeal to the Privy Council. 20.12.55. —*Contd.*

(as Commissioner) was made a party to the appeal in accordance with established practice ; vide *Karuppanan's case* (1953) 54 N. L. R. 481 at 484. The appeal was in due course allowed by Sansoni J and myself, and the present petitioner was directed to take appropriate action under section 14 (7) on the basis that a *prima facie* case for registration had been established. This is the order reported in (56 N. L. R. 313) against which the petitioner seeks leave to appeal to Her Majesty in Council.

In refusing the respondent's application for registration as a citizen of Ceylon, the Deputy Commissioner had performed a judicial function, but it may be conceded that the proceedings before him, as a statutory tribunal, did not at that stage constitute a " civil suit or action ". Nevertheless, a person aggrieved by a refusal of his application has a remedy by way of appeal to this court, which is then empowered in an appropriate case to enter a mandatory decree directing the Commissioner (as respondent to the appeal) to take further steps under the Act on the basis that the aggrieved person (as appellant) is *prima facie* entitled to the benefit of registration as a citizen of this country. This decree fundamentally affects the civil status of the person concerned and, with great respect to my Lord the Acting Chief Justice, I had no hesitation in reaching the conclusion that the parties to the appeal were parties to " a civil suit or action in the Supreme Court " within the meaning of the Appeals (Privy Council) Ordinance.

In this context, the words " *civil* suit or action " stand primarily in contradistinction to " *criminal* " proceedings. In addition, they exclude judgments and orders made by the Supreme Court in the exercise of a statutory jurisdiction which is merely of a consultative or administrative character or in proceedings which can be equated to arbitration proceedings. The present application related to an order for a mandatory decree affecting civil rights and therefore falls within the ambit of the Ordinance. There is no earlier ruling of this Court which compels us to refuse the remedy of an appeal to Her Majesty in Council.

(Sgd.) E. F. N. GRATIAEN,
Puisne Justice.

## No. 9

No. 9.
Decree of the Supreme Court granting Conditional Leave to Appeal to the Privy Council.
20.12.55.

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

*S. C. Application No. 150.*

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

In the matter of an application dated 16th March, 1955, for Conditional Leave to Appeal to Her Majesty the Queen in Council by the Respondent-Petitioner against the decree dated 18th February, 1955.

Herbert Ernest Tennekoon, Commissioner for Registration of Indian and Pakistani Residents, Colombo
.....*Respondent-Petitioner.*

vs.

Pathupatti Kitnan Duraisamy, of Glentilt Estate, Maskeliya
.....*Appellant-Respondent.*

Appeal No. 517 of 1954—Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949.

THIS cause coming on for hearing and determination on the 16th and 17th June and 20th December, 1955, before the Hon. H. H. Basnayake, Q.C., Acting Chief Justice and the Hon. E. F. N. Gratiaen, 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 with costs upon the condition that the applicant do within one month from this date :—

1. Deposit with the Registrar of the Supreme Court a sum of Rs. 3,000 and hypothecate the same by bond or such other security

No. 9. Decree of the Supreme Court granting Conditional Leave to Appeal to the Privy Council. 20.12.55. —*Contd.*

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).

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. Hema Henry Basnayake, Q.C., Chief Justice at Colombo, the 16th day of January, in the year One thousand Nine hundred and Fifty-Six and of Our Reign the Fourth.

(Sgd.) W. G. WOUTERSZ,
Deputy Registrar, S. C.

## No. 10

No. 10. Application for Final Leave to Appeal to the Privy Council. 11.7.55

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

*S. C. Application No. 150/1955*

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Appeal No. 517/1954 Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949.

In the matter of an Application made under Section 7 of the Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949.

And

In the matter of an Appeal under Section 15 of The Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949.

Pathupathi Kitnan Duraisamy of Glentilt Estate, Maskeliya .....*Applicant-Appellant.*

Vs.

The Commissioner for the Registration of Indian and Pakistani Residents, Colombo .....*Respondent.*

And

In the matter of an application for final leave to appeal to Her Majesty the Queen in Council.

Herbert Ernest Tennekoon, Commissioner for the Registration of Indian and Pakistani Residents, Colombo ..... *Respondent-Petitioner.*

Vs.

Pathupathi Kitnan Duraisamy of Glentilt Estate, Maskeliya.

*To :*

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

On this 11th day of July, 1955.

THE petition of the Respondent-Petitioner abovenamed appearing by Behram Kaikhushroo Billimoria and his assistant

No. 10
Application for Final Leave to Appeal to the Privy Council.
11.7.55.
—*Contd.*

Abdul Hameed Mohamed Sulaiman, his Proctor, states as follows :—

1. That the Respondent-Petitioner on the 17th day of June 1955 obtained conditional leave from this Honourable Court to appeal to Her Majesty the Queen in Council against the judgment of this Court pronounced on the 18th day of February 1955.

2. That in the order granting conditional leave to appeal no conditions were imposed under Rule 3 (*b*) of the Rules in the Schedule to the Appeals (Privy Council) Ordinance (Cap. 85).

3. That the Respondent-Petitioner has :

(*a*) on the 1st day of July 1955 deposited with the Registrar of this Court the sum of Rs. 3,000 being the security for costs of appeal under Rule 3 (*a*) of the schedule rules and hypothecated the said sum of Rs. 3,000 by bond dated 9th day of July, 1955, for the due prosecution of the appeal and that the payment of all costs that may become payable to the Appellant-Respondent in the event of the Respondent-Petitioner not obtaining an order granting him final leave to appeal or of the appeal being dismissed for non-prosecution of Her Majesty the Queen in Council ordering the Respondent-Petitioner to pay Appellant-Respondent's costs of appeal, and

(*b*) on the 1st day of July 1955 deposited the sum of Rs. 300 in respect of the amounts and fees as required by paragraph 8 (*a*) of the Appellate Procedure (Privy Council) Order 1921 made under Section 4 (1) of the aforesaid Ordinance.

Wherefore the Respondent-Petitioner prays that he be granted final leave to appeal against the said judgment of this Court dated the 18th day of February, 1955, to Her Majesty the Queen in Council.

(Sgd.) B. K. BILLIMORIA,
Proctor for Respondent-Petitioner.

## No. 11

No. 11.
Decree of the Supreme Court granting Final Leave to Appeal to the Privy Council.
2.2.56

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

*S. C. Application No. 385.*

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

In the matter of an application dated 11th July 1955, for Final Leave to Appeal to Her Majesty the Queen in Council against the decree of this Court dated 18th February, 1955.

Herbert Ernest Tennekoon, Commissioner for Registration of Indian and Pakistani Residents, Colombo ..... *Respondent-Petitioner.*

against

Pathupatti Kitnan Duraisamy of Glentilt Estate, Maskeliya .....*Appellant-Respondent.*

Appeal No. 517 of 1954—Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949.

THIS cause coming on for hearing and determination on the 2nd day of February, 1956, before the Hon. H. H. Basnayake, Q.C., Chief Justice and the Hon. K. D. de Silva, Puisne Justice of this Court, in the presence of Counsel for the Applicant and Respondent.

The applicant has complied with the conditions imposed on him by the order of this court dated 17th June, 1955, granting Conditional Leave to Appeal.

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

Witness the Hon. Hema Henry Basnayake, Q.C., Chief Justice at Colombo, the twentieth day of February, in the year One thousand Nine hundred and Fifty-six and of Our Reign the Fifth.

(Sgd.) W. G. WOUTERSZ,
Deputy Registrar, S. C.