

63, 1918

No. 90 of 1916.

In the Privy Council.

**ON APPEAL**

*FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.*

BETWEEN

WICKRAMASINGHE NAWARATNE PANDITTA WASALA  
ABEYKON GANWILA HERAT MUDIANSSELAGE  
TIKIRI BANDARA ELLEKEWALA, Basnayake Nilame  
and Trustee of Wallahagoda Temple, Gampola - - - (Plaintiff)  
*Appellant*

10

and

THE HONOURABLE THE ATTORNEY GENERAL,  
COLOMBO - - - - - (Defendant)  
*Respondent.*

**APPENDIX**

**TO THE CASE FOR THE RESPONDENT.**

APPENDIX "A"

PROCLAMATION.

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APPENDIX TO RESPONDENT'S CASE.

20 At a Convention held on the Second day of March in the year of  
Christ, 1815, and the Cingalese year 1736, at the Palace in the City of  
Kandy, between His Excellency Lieutenant-General Robert Brownrigg,  
Governor and Commander-in-Chief in and over the British Settlements  
and Territories in the Island of Ceylon, acting in the name and on behalf  
of His Majesty George the Third King, and His Royal Highness George  
Prince of Wales Regent, of the United Kingdom of Great Britain and  
Ireland, on the one part, and the Adigars, Dessaves and other principal  
Chiefs of the Kandyan Provinces on behalf of the Inhabitants, and in  
presence of the Mohattaes, Corals, Vidahns and other subordinate  
30 Headmen from the several Provinces and of the people then and there  
assembled on the other part, it is agreed and established as follows :—

1st. That the cruelties and oppressions of the Malabar Ruler in the  
arbitrary and unjust infliction of bodily tortures and the pains of Death

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without Trial and sometimes without an accusation or the possibility of a crime, and in the general contempt and contravention of all Civil Rights have become flagrant, enormous and intolerable, the acts and maxims of His Government being equally and entirely devoid of that Justice which should secure the safety of his subjects and of that good faith which might obtain a beneficial intercourse with the neighbouring Settlements.

2d. That the Rajah Sri Wikreme Rajah Sinha by the habitual violation of the chief and most sacred duties of a Sovereign, has forfeited all claims to that title or the powers annexed to the same, and is declared fallen and deposed from the Office of King—His family and relatives whether in the ascending, descending or collateral line, and whether by affinity or blood, are also for ever excluded from the Throne—and all claim and title of the Malabar race to the dominion of the Kandyan Provinces is abolished and extinguished. 10

3d. That all male persons being or pretending to be relations of the late Rajah Sri Wikreme Rajah Sinha either by affinity or blood, and whether in the ascending, descending or collateral line, are hereby declared enemies to the Government of the Kandyan Provinces and excluded and prohibited from entering those Provinces on any pretence whatever, without a written permission for that purpose by the authority of the British Government, under the pains and penalties of Martial Law, which is hereby declared to be in force for that purpose—and all male persons of the Malabar cast now expelled from the said Provinces are under the same penalties prohibited from returning except with the permission before mentioned. 20

4th. The Dominion of the Kandyan Provinces is vested in the Sovereign of the British Empire, and to be exercised through the Governors or Lieutenant Governors of Ceylon for the time being and their accredited Agents, saving to the Adigars, Dessaves, Mohattales, Corals, Vidhaans and all other chief and subordinate Native Headmen, lawfully appointed by authority of the British Government, the Rights, Privileges and Powers of their respective Offices, and to all classes of the people the safety of their persons and property, with their Civil rights and immunities, according to the laws, institutions and customs established and in force amongst them. 30

5th. The Religion of Boodhoo professed by the Chiefs and inhabitants of these Provinces is declared inviolable, and its Rites, Ministers and Places of Worship are to be maintained and protected.

6th. Every species of bodily torture, and all mutilation of limb, member or organ, are prohibited and abolished.

7th. No sentence of Death can be carried into execution against any inhabitant except by the written Warrant of the British Governor or Lieutenant Governor for the time being, founded on a Report of the case made to him 40

through the accredited Agent or Agents of the Government resident in the Interior, in whose presence all trials for Capital offences are to take place, Appendix to  
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8th. Subject to these Conditions, the administration of Civil and Criminal Justice and Police over the Kandyan inhabitants of the said Provinces is to be exercised according to established Forms and by the ordinary authorities, saving always the inherent Right of Government to redress grievances and reform abuses in all instances whatever, whether particular or general, where such interposition shall become necessary.

10 9th. Over all other persons Civil or Military residing in or resorting to these Provinces not being Kandyans, Civil and Criminal Justice together with Policy, shall until the pleasure of His Majesty's Government in England may be otherwise declared, be administered in manner following:—

20 1st. All persons not being Commissioned or Non-Commissioned Military Officers, Soldiers or Followers of the Army usually held liable to Military Discipline, shall be subject to the Magistracy of the accredited Agent or Agents of the British Government in all cases except charges of Murder, which shall be tried by special Commissions to be issued from time to time by the Governor for that purpose. Provided always as to such Charges of Murder wherein any British Subject may be defendant, who might be tried for the same by the Laws of the United Kingdom of Great Britain and Ireland in force for the Trial of offences committed by British Subjects in Foreign Parts, no such British Subject shall be tried on any Charge of Murder alleged to have been perpetrated in the Kandyan Provinces, otherwise than by virtue of such Laws of the United Kingdom.

30 2d. Commissioned or Non-Commissioned Military Officers, Soldiers or Followers of the Army usually held amenable to Military Discipline, shall in all Civil and Criminal Cases wherein they may be Defendants, be liable to the Laws, Regulations and Customs of war, reserving to the Governor and Commander-in-Chief in all cases falling under this ninth Article an unlimited right of review over every proceeding, Civil or Military, had by virtue thereof, and reserving also full power to make such particular provisions conformably to the general spirit of the said Article as may be found necessary to carry its principle into full effect.

10th. Provided always that the operation of the several preceding clauses shall not be contravened by the provisions of any temporary or partial proclamation published during the advance of the Army; which provisions, in so far as incompatible with said preceding Articles, are hereby repealed.

40 11th. The Royal Dues and Revenues of the Kandyan Provinces are to be managed and collected for His Majesty's use and the support of the Provincial

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Establishment according to lawful Custom and under the direction and superintendence of the accredited Agent or Agents of the British Government.

12th. His Excellency the Governor will adopt provisionally and recommend to the confirmation of His Royal Highness the Prince Regent in the name and on behalf of His Majesty such Dispositions in favour of the trade of these Provinces, as may facilitate the Exports of their products, and improve the Returns, whether in Money, or in Salt, Cloths, or other Commodities, useful and desirable to the Inhabitants of the Kandyan Country.

GOD SAVE THE KING.

(Signed) ROBERT BROWNRIGG, <i>Governor.</i>	{	(Signed) EYHELEPOLA. 10
		” MOLLIGODDA, 1st Adikar and Dissave of the 7 Korles.
		” PELIME TALAWE, 2nd Adikar and Dissave of Saffregam.
		” PELIME TALAWE, Dissave of the 4 Korles.
		” MONARAWILA, Dissave of Ouwa.
		” RATWATTE, Dissave of Matele.
		” MOLLIGODDA, Dissave of the 3 Korles. 20
		” DULLEYWE, Dissave of Walapane.
		” MILLAWA, Dissave of Welasse and Bintenne.
		” GALAGAMA, Dissave of Tamankada.
” GALAGODA, Dissave of Nuwara Kalawiya.		

In presence of

J. D'OYLY, 30  
*Chief Translator to Government.*

JAMES SUTHERLAND,  
*Dep. Secretary to Government.*

## APPENDIX "B."

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Respondent.

## ORDINANCE No. 16 of 1865.

Officers of Police not below the grade of sub-inspector may, as occasion requires, direct the conduct of all assemblies and processions in the public roads, streets or thoroughfares, prescribe the routes by which and the times at which such processions may pass, and direct all crowds of twelve or more persons to disperse when they have reason to apprehend any breach of the peace. All officers of police shall and may keep order in the public roads, streets, thoroughfares and landing places, and all other places of public resort, and prevent obstructions on the occasions of such assemblies and processions, and in the neighbourhood of places of worship during the time of public worship, and in any case when the roads, streets, or thoroughfares, or landing places may be thronged, or may be liable to be obstructed. They may also regulate the use of music in the streets, when the same shall be allowed. Every person opposing or not obeying the orders so given as aforesaid, or violating the conditions of any licence granted by such Superintendent or other officers for the use of such music, or for the assembling of any such body of persons, shall be liable to a fine not exceeding twenty pounds; Provided always that nothing in this section contained shall be deemed to interfere with the general control of the Magistrate over such matters.

Section 69.

[§ 8, 7 of  
1910.]

\* \* \* \*

No elephant shall be permitted to pass along any street, road or thoroughfare within any town and limits except between the hours of two and eight in the morning; and every person riding, driving or conducting any elephant, or causing any elephant to be ridden, driven or conducted along any such street, road or thoroughfare, except between such hours as aforesaid, shall be guilty of an offence, and shall be liable to a fine not exceeding five pounds; Provided always that nothing in this clause contained shall apply to the employment of elephants in any town or limits under a written licence granted by the Government Agent of the Province or Assistant Government Agent of the district.

Section 84.

[§ 4, 14 of  
1907.]

\* \* \* \*

All persons who shall at any time within any town and limits, either within or without any house or building, beat drums, or tom-toms, or have or use any other music calculated to frighten horses, or who shall make any noise in the night so as to disturb the repose of the inhabitants, or who shall at any time discharge firearms, crackers or fireworks, except under military regulation, or unless they shall have obtained a licence from the Police Magistrate of the district, or from the Chief Superintendent of Police or Provincial Inspector, who are hereby authorised to grant the same when it shall to them appear ex-

Section 90.

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pedient, or who shall play at any games, in or near any street, road or thoroughfare, or fly any kite, or throw any stone or other missile, or wilfully or negligently make any noise or do any act or thing in a manner calculated to terrify or injure any passenger, horse or cattle, or to injure any property, shall be guilty of an offence, and be liable to any fine not exceeding five pounds, or to imprisonment, with or without hard labour, for any period not exceeding three months.

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ORDINANCE No. 13 of 1898.

Section 64

It shall be lawful for the Board to grant permission for any religious or public procession or the performance of any music in the streets of the town, and to regulate and restrict such processions and music in such manner as the Board shall think fit, regard being had to the comfort and convenience of the inhabitants.

In the Privy Council.

**ON APPEAL**

FROM THE SUPREME COURT OF THE ISLAND  
OF CEYLON.

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BETWEEN

WICKRAMASINGHE NAWARATNE  
PANDITTA WASALA ABEYKOON  
GANWILA HERAT MUDIANS-  
LAGE TIKIRI BANDARA ELLE-  
KEWALA, Basnayake Nilame and  
Trustee of the Wallahagoda Temple,  
Gampola (Plaintiff) - - - - *Appellant*

AND

THE HONOURABLE THE ATTORNEY  
GENERAL, COLOMBO (Defendant) *Respondent*

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**APPENDIX**  
TO  
**CASE FOR RESPONDENT.**

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**BURCHELLS,**

*5, The Sanctuary*

*Westminster,*

*Solicitors for the Respondent.*