

15/1960

IN THE PRIVY COUNCIL

No. 62 of 1960

ON APPEAL FROM
THE SUPREME COURT OF THE ISLAND OF CEYLON

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES

29 MAR 1963

25 RUSSELL SQUARE
LONDON, W.C.1.

B E T W E E N :

NALLA KARUMBURU KAYAMBU SHANMUGAM
(Applicant)

Appellant

68165

- and -

THE COMMISSIONER FOR THE REGISTRATION
OF INDIAN AND PAKISTANI RESIDENTS

Respondent

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CASE FOR THE RESPONDENT

Record

1. This is an appeal by Special Leave from a Decree of the Supreme Court of the Island of Ceylon, dated the 8th day of August, 1958, dismissing an appeal by the Appellant from an Order of the Deputy Commissioner for the Registration of Indian and Pakistani Residents, dated the 23rd day of May 1957, whereby the Appellant's application to be registered as a citizen of Ceylon under the Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949 was refused.

p.55.
p.54.
p.48.

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2. The said Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949, as amended by the Indian and Pakistani Residents (Citizenship) (Amendment) Act No. 37 of 1950 and the Indian and Pakistani Residents (Citizenship) Amendment Act No. 45 of 1952, provided inter alia as follows:-

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"Section 2. Notwithstanding anything in any other law, an Indian or Pakistani resident to whom this Act applies may be granted the status of a citizen of Ceylon by registration, upon the conditions and in the manner prescribed by this Act.

"Section 3. (1) This Act shall, subject to the provisions of section 4, apply solely to those Indian or Pakistani residents in

Ceylon who are possessed of the special residential qualification, which in each case shall consist -

(a) in the first instance, of uninterrupted residence in Ceylon, immediately prior to the first day of January, 1946, for a period not less than the appropriate minimum period hereinafter specified; and

(b) secondly, of uninterrupted residence in Ceylon from the aforesaid day to the date of the application made in that case for registration under this Act. 10

(2) The appropriate minimum period of uninterrupted residence required by paragraph (a) of sub-section (1) shall -

(a) in the case of a person who is unmarried at the date of his application for registration, or in the case of a married person whose marriage has been dissolved by death or divorce prior to that date, be a period of ten years; and 20

(b) in the case of any married person (not being a married person referred to in paragraph (a) of this sub-section), be a period of seven years.

(2a)

(3) For the purposes of this Act....., the continuity of residence of an Indian or Pakistani in Ceylon shall, notwithstanding his occasional absence from Ceylon, be deemed to have been uninterrupted if, but only if, such absence did not on any one occasion exceed twelve months in duration. 30

"Section 4. (1) Any Indian or Pakistani resident to whom this Act applies may, irrespective of age or sex, exercise the privilege of procuring registration as a citizen of Ceylon for himself or herself, and shall be entitled to make application therefor in the manner hereinafter prescribed 40

(2) In the exercise of the aforesaid privilege -

(a) a male Indian or Pakistani resident, if he is married, may procure, in addition to his own registration, the registration of his lawful wife (whether or not she is herself possessed of the special residential qualification) or of any legitimate minor child born to him of that or any previous marriage or any minor child borne by his wife prior to that marriage, who may be ordinarily resident in Ceylon and dependent on him
.....

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x x x x x x x

"Section 6. It shall be a condition for allowing any application for registration under this Act that the applicant shall have -

(1) first prove that the applicant is an Indian or Pakistani resident and as such entitled by virtue of the provisions of section 3 and 4 to exercise the privilege of procuring such registration

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(2) in addition, produced sufficient evidence (whether as part of the application or at any subsequent inquiry ordered under this Act) to satisfy the Commissioner that the following requirements are fulfilled in the case of the applicant, namely -

(i) that the applicant is possessed of an assured income of a reasonable amount, or has some suitable business or employment or other lawful means of livelihood, to support the applicant and the applicant's dependants, if any;

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(ii) where the applicant is a male married person (not being a married person referred to in paragraph (a) of section 3 (2)), that his wife was uninterruptedly resident in Ceylon from a date not later than the first anniversary of the date of her marriage and until the date of the application

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

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

(a) the applicant will be deemed in law to have renounced all rights to the civil and political status the applicant has had, or would, but for such registration in Ceylon have had, under any law in force in the territory of origin of the applicant or the applicant's parent, ancestor or husband, as the case may be, and 10

(b) in all matters relating to or connected with status, personal rights and duties and property in Ceylon, the applicant will be subject to the laws of Ceylon. 20

Nothing in the preceding paragraph 2 (ii) shall require or be deemed to require that any wife should have been resident in Ceylon at any time prior to January 1, 1939.

For the purpose of the preceding paragraph 2(ii) the continuity of residence of the wife of an applicant shall, notwithstanding her occasional absences from Ceylon be deemed to have been uninterrupted if such absences did not on any occasion exceed twelve months in duration. 30

For the purpose of the preceding paragraph 2(ii) the continuity of residence of the wife of an applicant shall not be deemed to have been interrupted by reason that she was not resident in Ceylon during the period commencing from 1st December, 1941 and ending 31st December, 1945, or during any portion of that period, if the Commissioner is satisfied that she did not reside in Ceylon 40

during that period or part thereof owing to apprehension of enemy action in or against Ceylon or owing to special difficulties caused by the existence of a state of war.

x x x x x x x x

"Section 22. In this Act, unless the context otherwise requires, -

.....

10 "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

20 (b) who has emigrated therefrom and permanently settled in Ceylon, and includes -

(i) a descendant of any such person and

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

30 3. By application dated the 10th and 13th July 1951, the Appellant applied under section 4 (1) of the said Act to be registered as a citizen of Ceylon together with his wife and minor children. The Appellant stated that he resided at number 37, Nuwara Eliya Road, Pussellawa, that he was aged 34, that he had been born at Nagaram, Pattukottai Taluk, Tanjore District, South India and that he had been married on the 16th day of March 1944. He further stated that his income was derived from a position as Manager and Attorney to N.K.K. Pandian, 37, Nuwara Eliya Road, Pussellawa. In his said application, which was supported by affirmation, the 40 Appellant also set out the various particulars

p.1.

p.4, 1.31 to p.5, 1.1.

p.6, 11.11-20.

p.8.

- p.7. Record relating to his children, stating that they had resided since their birth at number 37, Nuwara Eliya Road, Pussellawa and stated the places of residence of his wife in Ceylon from the date of the marriage as being "1944 to 1945" - number 9, Puppurasa Bazaar, "1945 to 1951" - number 37, Nuwara Eliya Road, Pussellawa.
- p.7.
- pp.11-12. 4. The Appellant answered a "Questionnaire relating to permanent settlement" on the 3rd day of August 1953, and stated therein that he, his wife and minor children owned no immovable property in India, Pakistan or elsewhere, and that in Ceylon he had "an asset of Rs. 10,000/=" which he had given out "on interest by means of pro-note." The Appellant was further asked in the said Questionnaire what visits he, his wife and minor children had paid to India and Pakistan since January 1, 1936/ January 1, 1939, and what was the duration and purpose of each visit. The Appellant answered this question as follows:- 10
- p.11, 11.25-31.
- p.12, 11.11-25. "I have visited India on 6 occasions. 1939-1944 I have been to India on two occasions. I can't remember dates and I didn't stay for more than three months. 1944 - I went alone to get married. 1945 - I took my family from Ceylon to India (1 month) 1946 - I went to bring my family to Ceylon (1 month) 1947 - I took my family from Ceylon to India (1½ months) 1948 - I went alone to bring my family to Ceylon (1 month) 1951 - I went alone and stayed about a month for my sister's marriage." 20
- p.15, 11.19-24. 5. An Investigating Officer duly made investigations to verify the particulars and statements in the Appellant's application, in the course of which investigations he saw an entry in the Ledger Account of N.K.K. Palainasamy and Brothers, Pupuresa which showed that the Appellant had on the 5th day of 40

September 1944 proceeded to India with Rs.2/93 worth of garments. The Investigating Officer further stated in his note that the Appellant declared, "That he did not proceed to India as per entry 5/9/44 and that he went later.

Record

p.16, 11.27-30.

6. On the 4th day of June 1954 the Deputy Commissioner for the Registration of Indian and Pakistani Residents gave notice to the Appellant that he had decided to refuse his application on the grounds that the Appellant had failed to prove:-

p.18.

(1) that he was resident in Ceylon during the period 6th September 1944 to 14th November 1945 without absence exceeding 12 months on any single occasion.

(2) that his wife and dependant minor children were resident in Ceylon during the periods specified below without absence exceeding 12 months on any single occasion.

Wife from 16th March 1945 to 12th November 1946 and from 26th November 1946 to 1st April 1948.

(1) Child Karuppiah from first anniversary of date of birth to 18.1.50.

(2) Child Karunanithi from first anniversary of date of birth to 13.7.51.

(3) that he had permanently settled in Ceylon; the contrary being indicated by the fact that in seeking to remit money abroad, he declared himself to be temporarily resident in Ceylon.

7. On the 14th day of July 1954 the Appellant wrote to the Deputy Commissioner asking for an inquiry in accordance with the provisions of the Act.

p.19.

8. The said inquiry was started before Mr. W.E.M. Abeysekera, Deputy Commissioner, on the 31st day of July 1956, on which date the Appellant gave evidence. In his evidence the Appellant said:-

p.27.

"I was resident at Pupuressa in September 1944. In October 1945 I shifted to No. 37

p.27, 11.19-30.

Nuwara Eliya Road, Pussellawa. In February 1944 I went to India and stayed there for 5 months. I went to India on that occasion to get married. Then I went to India in October 1944 and returned in February 1945. It was in 1945 that I brought my wife to Ceylon. In 1945 I went to India in May or June. I went to India in May or June 1945 and brought my wife and 1st child Karuppiyah to Ceylon in October 1945. In November 1945 I was at No. 37 Nuwara Eliya Road, Pussellawa." 10

p.28, 1.5.
p.69. The Appellant produced various documents, one, "P4", being a general power of attorney dated the 16th day of November 1945 purporting to be given by his brother, N.K.K. Pandiyan, son of Kayambu Pandaram, Hindu Veera Sivité, residing in Nagaram Village in Pattukottai Taluk, Tanjore District, South India, appointing the Appellant as General Attorney to manage and carry on his business carried on in the name and style of N.K.K. Pandiyan, Licensed Pawn Broker, Dealer, etc., at 37, Nuwara Eliya Road, Pussellawa. 20

p.28, 11.32-33. The Appellant further stated that he first came to Ceylon in 1933 and had been in Ceylon for the last 23 years.

With regard to his wife, he testified as follows :-

p.28, 11.34-41. "My wife arrived in Ceylon for the first time in October 1945. After her arrival in Ceylon in 1945 she went to India in October 1947. She went for her 2nd confinement in respect of Karunanithy. I returned to Ceylon leaving her and brought her in May or June 1948. I do not have the Birth Certificates of Karuppiyah and Karunanithy because they were born in India." 30

p.30. The inquiry was adjourned and resumed on the 31st day of August 1956, when one B.P. Ariyadasa gave evidence on behalf of the Appellant. In the course of his evidence the said Ariyadasa stated that from 1941 to 1953 he knew the Appellant intimately, that the Appellant "used to go to India, but returned within a month or two. Pandian, applicant's brother left for India somewhere in 1944 or 1945." 40

p.31, 11.5-6.
p.31, 11.8-11.

The inquiry was further adjourned, and at a further hearing on the 10th day of May 1957 the Deputy Commissioner allowed an application by the Appellant's Proctor for the Appellant to be recalled. In his further evidence the Appellant testified as follows:-

Record
p.44.
p.44, 11.17-18.

10 "Between 6th Sept. 1944 - 14th November 1945 I went to India twice. In October 1944 I went to India and returned in February 1945. I got married in March 1944 in India. In October 1945 I brought my wife to Ceylon. From March 1944 - October 1945 my wife was in India. In October 1944 I went to India to visit my wife and to celebrate the first Deepavali Festival. In January 1944 I went to India to get married and returned in May 1944 alone after marriage. Within the period Sept. 1944 to Nov. 1945, my second visit to India, was to bring my wife to Ceylon. During 20 the period September 1944 to 14th November 1945 I was not away from Ceylon for 12 months at a stretch.

p.44, 1.22 to
p.45, 1.5.

I did not bring my wife to Ceylon immediately after marriage because my wife was frightened to come for fear of Enemy action. She was also pregnant and was afraid to travel.

My wife first came to Ceylon in October 1945.

30 My business in Ceylon is worth Rs. 150,000/00.

p.45, 11.17-18.

I am a textile merchant and Pawn broker.

I remember having completed my application for citizenship in 1951. I instructed a person to complete the application for me. I don't remember the name of the person who completed the form for me.

p.45, 11.22-42.

40 Shown page six of the application to applicant regarding the residence of his wife in Ceylon where it is stated that she was in Ceylon at No. 9 Puppurasa Bazaar from 1944 - 1945 - That entry is a mistake - my wife never lived at Puppurasa - I swore to the accuracy of the particulars in my application before Mr. H.J.P.

Record

Samarasekera, J.P. I came to Ceylon in 1933. I have been to India about six or seven times. In 1945 I did not take my family from Ceylon to India.

Shown page 8 overleaf - this is my signature. The statement there that I took my family to India in 1945 is incorrect. I cannot explain why I have stated at page 9 that I took my family to India in 1945. I did not go to India in 1946 to bring my family. I went alone to India in 1946.

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p.46, 11.2-13.

In November 1947 I took my wife to India for her second confinement. In April 1948 I went to India to bring my wife to Ceylon.

I have relatives in India. I have three brothers in India - three others are in Ceylon. The three of us in Ceylon are partners in business. My brothers in India are farmers - they are not businessmen. My brother is living in India. My wife has relatives in India - her mother and brother are in India."

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p.47, 11.27-28.

p.48.

p.48, 11.6-8.

p.49, 11.30-34.

p.48, 1.45 to
p.49, 1.29.

9. On the 10th day of May 1957 the Deputy Commissioner refused the Appellant's application, stating that he would give his reasons later. The Deputy Commissioner stated his reasons in his formal order refusing the Appellant's application made on the 23rd day of May 1957. In his said order the Deputy Commissioner said that he was satisfied that the Appellant was in fact continuously resident in Ceylon during the period in issue, namely the 6th day of September 1944 to the 14th day of November 1945 and also that he was satisfied as regards the residence of the Appellant's children, but held that the Appellant had failed to prove the requisite residential qualification for his wife, i.e. that she was resident in Ceylon from the 16th day of March 1945 to the 12th day of November 1946 and from 26th November 1946 to the 1st day of April 1948. The Deputy Commissioner held that the Appellant could not take advantage of the exempting provision in the amended section 6 of the said Act as to the interruption of the continuity of residence of the wife of an applicant by reason of apprehension of enemy action in or against Ceylon or owing to special difficulties caused by the existence of a state of war. He dealt with this matter as follows :-

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"The applicant got married in India on 16.3.1944. At the Inquiry held in 31.7.56. the applicant stated that he brought his wife to Ceylon for the first time in October 1945. On this date he gave no reason as to why he brought her to Ceylon so long after marriage. The applicant was represented by a proctor. His evidence was concluded and the evidence of another witness was recorded. On 10.5.57 when inquiry was reconducted into this case before applicant's proctor made an application to recall the applicant. I allowed his application. Evidence of the applicant was led to the effect that he married in March 1944 and brought his wife to Ceylon in October 1945. For the first time the applicant tried to make out that his wife was prevented from coming to Ceylon earlier due to fear of enemy action. He stated also that she was pregnant at the time and was frightened to travel. It will be seen therefore that a belated attempt was made to take advantage of Section 2 (3) (ii) of Act No. 45 of 1952. The section reads thus - "the continuity of residence of the wife of an applicant shall not be deemed to have been interrupted by reason that she was not resident in Ceylon during the period 1.12.41 - 13.12.1945, or during any part of that period, if the Commissioner is satisfied that he or she did not reside in Ceylon during the period or part thereof during the apprehension of enemy action in or against Ceylon or owing to special difficulties caused by the existence of war."

This section I think applies only to wives of or minor children of applicants who have at some time been in Ceylon and who were for the reasons stated in the section taken to India for their greater safety. It cannot be said that continuity of residence has been interrupted if a person has however been resident in this country. If any case I am not at all satisfied that the reasons stated in the section are the reasons which prevented the applicant from bringing his wife to Ceylon. The evidence of the applicant is that his wife was frightened to come to Ceylon as she was pregnant and she feared enemy action. The applicant could have brought his wife to

Record

Ceylon before she was advanced in pregnancy. There is a more serious reason for me to suspect the applicant's evidence than the mere fact that it was belated. In his application at page six the applicant has stated under affirmation that his wife was resident in Ceylon at No. 9 Puppuressa Bazaar from 1944-1945. The applicant had apparently forgotten the statement when he stated at the inquiry that his wife was not in Ceylon prior to October 1945. I am therefore not satisfied that the reasons which prevented the applicant from bringing his wife to Ceylon for more than one year after marriage were the reasons the applicant gave at the Inquiry, the applicant's wife should have been in Ceylon at least on 16.3.45. She was not in Ceylon on that date. On this undisputed fact alone this application must fail."

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p.49, 11.35-36. 10. The Deputy Commissioner also stated that he was not satisfied that the applicant had permanently settled in Ceylon. He stated:-

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p.49, 11.37-49.

"Even after 1944 the applicant has been to India almost annually. He went to India to get married, he left his wife in India for over a year after her marriage. Two of the applicant's children were born in India. There is no evidence that the applicant has acquired any immovable property in Ceylon. The applicant certainly has certain business interests in Ceylon - he is a Pawn Broker and textile merchant. But apart from his business interests the applicant does not appear to have any other interests in this country. It appears to me that the applicant has always regarded the country of his origin as his home."

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The Deputy Commissioner added the following further observations:-

p.50, 11.1-18.

"Mere length of residence in a country for purposes of business alone, I don't think is sufficient to show that a person has permanently settled in a country. It is the view of jurists that a domicile of origin is not easily displaced - and in this case it is particularly so because the applicant's country of origin is a neighbouring country.

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10 The applicant could very well regard Ceylon as the country where he could conveniently and profitably establish and carry on business, and regard India as his home. In this case, the applicant's conduct shows that to him Ceylon is no more than a happy hunting ground for purposes of business and that the country of his origin is really his home. I hold that the applicant has not acquired a domicile of choice in Ceylon.

The application is refused."

11. By Petition of Appeal dated the 1st day of July 1957 the Appellant appealed against the said order of the Deputy Commissioner to the Supreme Court of the Island of Ceylon. The said appeal was heard by the said Supreme Court (K.D. de Silva Puisne Justice) on the 8th day of August 1958, upon which date it was dismissed with costs. p.50.
p.54.

20 12. The Respondent submits that the Deputy Commissioner was entitled to reject the Appellant's explanation for his wife's non-residence in Ceylon from the 16th day of March 1945 to October, 1945. Section 6 of the Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949, as amended by section 2 of the Indian and Pakistani Residents (Citizenship) Amendment Act No. 45 of 1952, required him to be "satisfied" that the non-residence of the wife in Ceylon during that time was "owing to apprehension of enemy action in or against Ceylon or owing to special difficulties caused by the existence of a state of war." The Deputy Commissioner, having seen and heard the Appellant give evidence on two occasions, and, having regard also to the untrue statement on this matter contained in the original application, supported by affirmation, as well as the Appellant's failure to advance any explanation for his wife's non-residence when he first gave evidence, was not so satisfied. It is respectfully submitted that the Deputy Commissioner had ample material upon which to find against the Appellant on this issue of fact, and that this finding ought not to be interfered with.

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13. It is submitted that, in any event, even if it be held that the Deputy Commissioner's finding of fact on this issue be wrong, it still cannot be said that the continuity of residence in Ceylon of

the Appellant's wife was "interrupted" so as to bring her within the wording of the amended section 6, since such residence never commenced. It is submitted that the exemption in the section, as amended, in terms applies only to a case where a wife commenced residence in Ceylon, but absented herself for a period for one or other of the reasons specified in the section. The Respondent respectfully submits that the case of Fakrudeen v. Commissioner for Registration of Indian and Pakistani Residents (57 Ceylon New Law Reports p.111), which held the contrary, was wrongly decided.

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14. The Respondent also submits that the Deputy Commissioner was entitled to find that he was not satisfied that the Appellant had permanently settled in Ceylon. It is conceded that the case of Tennekoon v. Duraisamy, 1958 A.C. p.354, decided that the mere fact that an applicant who has satisfied the other conditions laid down in the Act has elected to apply for registration as a citizen of Ceylon is sufficient to discharge the initial burden of proof which lies upon him and to establish a prima facie case for registration, but it was expressly said in that case that this fact did not preclude the Commissioner from coming to the decision, after considering all relevant matters, that at the time of his application the applicant had not a genuine intention to settle permanently in Ceylon. In the present case, it is submitted the Deputy Commissioner did so decide and he had sufficient material upon which so to do. It is submitted that the Appellant's long and frequent visits to India, his lack of any considerable assets in Ceylon, his employment as Manager for his brother, who lives in India, of a business in Pussellawa (according to P.4, produced by the Appellant when he first gave evidence), as well as his inconsistencies and contradictions and, it is submitted, lack of candour in dealing with these parts of his case, were all matters which may have rightly influenced the Deputy Commissioner in rejecting the evidence of the Appellant on this and the other issue of fact decided adversely to the Appellant.

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15. The Respondent respectfully submits that the order of the Supreme Court of the Island of Ceylon, dated the 8th day of August 1958, was right and ought to be affirmed and this appeal ought to be

dismissed, for the following (amongst other)

R E A S O N S

1. BECAUSE the Deputy Commissioner was entitled to find that he was not satisfied that the reason for the Appellant's wife's non-residence in Ceylon during the material period was apprehension of enemy action in or against Ceylon or special difficulties caused by the war.
- 10 2. BECAUSE in any event, the residence of the Appellant's wife in Ceylon did not start until October 1945, and could not therefore be said to have been "interrupted" in March 1945, and therefore the exemption contained in section 6 of the Indian and Pakistani Residents (Citizenship) Act (No. 3 of 1949), as amended, could not apply.
- 20 3. BECAUSE there was material before the Deputy Commissioner on which he could find that, at the time of his application, the Appellant had not a genuine intention to settle permanently in Ceylon, and he was entitled to find accordingly.
4. BECAUSE the Deputy Commissioner's findings of fact ought not to be disturbed.
5. BECAUSE the order of the Deputy Commissioner affirmed by the said Supreme Court was right for the reasons therein stated and should be upheld.

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DINGLE FOOT.

MONTAGUE SOLOMON.

No. 62 of 1960

IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT
OF THE ISLAND OF CEYLON

B E T W E E N :

NALLA KARUMBURU KAYAMBU SHANMUGAM
(Applicant) Appellant

- and -

THE COMMISSIONER FOR THE
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Respondent

CASE FOR THE RESPONDENT

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.
Solicitors for the Respondent.