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LONDON, W.C.1.

Supreme Court of Ceylon  
No. 693 (Final) of 1956

District Court, Jaffna  
No. 10403 68176

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

BETWEEN

THE BANK OF CEYLON, Jaffna.

*Plaintiff-Appellant*

AND

K. Arumugam Chelliahpillai of Karainagar, presently of Hospital Road, Jaffna.

*Defendant-Respondent*

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RECORD  
OF PROCEEDINGS

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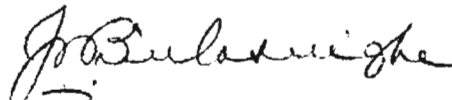
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CORRECTION SLIP

<u>Page</u>	<u>Line</u>	<u>Error</u>	<u>Correction</u>
35	5	H.W.Jayawardana, Q.C.	H.W.Jayawardene, Q.C.
35	8	M.Ambalavannar	M.Ambalavanar
35	23	Rs.14,729/61 referred to	Rs.14,729/61 (referred to
37	29	six per cent per annum,	six per centum per annum,
38	1	for the payment thereon	for the payment thereof
38	26	(s.40 et Sec)	(s.40 et Seq)
38	27	(s.75 et Sec)	(s.75 et Seq)
38	39	Shamachura Bhutto	Shamachurn Bhutto
39	21	Chevrolett Lorry	Chevrolet Lorry
40	12	and with said Bank	and with the said Bank
40	14	nothing therein contained	nothing herein contained
40	26	Rupees Twenty Thousand only Rs.20,000/- of	Rupees Twenty Thousand only (Rs.20,000/-) of
41	4	Rupees Twenty Thousand only Rs.20,000/- of	Rupees Twenty Thousand only (Rs.20,000/-) of
41	7	Rupees Twenty Thousand only Rs.20,000/- at	Rupees Twenty Thousand only (Rs.20,000/-) at
41	13	mortgage and hypothe- cation affected	mortgage and hypothe- cation effected.



Registrar of the Supreme Court,

CEYLON.

May 20, 1960.

No. ....

Supreme Court of Ceylon  
No. 693 (Final) of 1956

District Court, Jaffna  
No. 10403

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

BETWEEN

THE BANK OF CEYLON, Jaffna.

*Plaintiff-Appellant*

AND

K. Arumugam Chelliahpillai of Karainagar, presently of Hospital Road, Jaffna.

*Defendant-Respondent*

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RECORD OF PROCEEDINGS

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## Journal Entries.

No. 1  
Journal  
Entries  
8-10-53 to  
10-6-59

## IN THE DISTRICT COURT OF JAFFNA.

No. 10403  
Class IV.  
Amount : Rs. 13,461/77  
Nature : Bond  
Procedure : Regular

10           The Bank of Ceylon, Jaffna.

*Plaintiff.*

*Vs.*

K. A. Chelliahpillai of Karainagar.

*Defendant.*

## JOURNAL.

The 8th day of October 1953.

Mr. V. Navaratnarajah files appointment and plaint together with Mortgage Bond No. 3427 of 20th February, 1952, scheme of advertisement and conditions of sale and moves for summons on the defendant.

20           (1) Plaint accepted.

(2) File declaration and move.

Summons issued with Precept returnable the    day of    19.

(Sgd.) Illegibly,  
*Additional District Judge.*

11-1-54

Mr. V. Navratnarajah, Proctor for Plaintiff files declaration and moves for summons on the defendant and notice on the party disclosed.

Issue summons and notice for 18-2-54.

30

(Sgd.) Illegibly,  
*Addl. District Judge.*

No. 1 5-2-54  
Journal  
Entries  
8-10-53 to  
10-6-59  
—continued.

Summons on the defendant and notice on K. Chokalingam issued through Fiscal, Northern Province.

6-2-54

Return filed.

(Intd.) .....  
*Additional D. J.*

18-2-54

Mr. V. Navaratnarajah for plaintiff.

(1) Vide Journal entry of 11-1-54.

(2) Summons on the defendant and notice on party disclosed not served.

10

(3) Reissue same for 25-3-54.

(Intd.) .....  
18-2

24-2-54

Summons on the defendant and notice on party disclosed reissued through Fiscal, Northern Province.

(Intd.) .....

27-2-54

Return filed.

25-3-54

Mr. V. Navaratnarajah for plaintiff.

(1) Vide Journal Entry of 18-2-54.

(2) Summons on defendant served.

(3) The defendant K. A. Chelliapillai is absent.

(4) Notice on party disclosed served.

(5) K. Chokalingam is absent.

Proxy of defendant filed.

Answer on 6-5.

(Intd.) .....

25-2 30

6-5-54

Mr. V. Navaratnarajah for plaintiff.  
Mr. C. C. Somasegaram for defendant.  
(1) Vide Journal entry of 25-3-54.  
(2) Answer due filed.  
Trial on 1-9.

No. 1  
Journal  
Entries  
8-10-53 to  
10-6-59  
—continued.

(Intd.) .....

6-5

26-8-54

10

Proctor for plaintiff files list of witnesses and documents.

(Intd.) .....

**T R I A L .**

1-9-54

Mr. Advocate C. Ponnambalam instructed by  
Mr. V. Navaratnarajah for plaintiff.  
Mr. C. C. Somasegaram for defendant.

(1) Mr. Advocate Soorasangaram who appears for the defendant is unable to attend Court today owing to a bereavement in the family—vide letter. Trial refixed for 7-12.

20

(Intd.) .....

1-9

12-11-54

Defendant's list of witnesses filed.

Paying-in-Voucher for Rs. 100/- issued to Proctor for defendant.

M. R. Peiris Rs. 50/-.

A. J. A. Perera Rs. 50/-.

(Intd.) .....



No. 1 25-11-54  
Journal  
Entries  
8-10-53 to  
10-6-59  
—continued.

Proctor for defendant files Kachcheri Receipt No. 004854 for Rs. 100/- and cites 2 and issues through Fiscal, Western Province.

(Intd.) .....

*Eo. Die.*

Proctor for defendant files defendant's additional list of witnesses and moves to cite the Deputy Fiscal, Colombo to produce or cause to be produced certain documents of which copies have been obtained by the defendant.

Cite, on deposit of necessary batta, for the production of the documents mentioned under witness No. 1 in the list of witnesses dated 24-11-54. 10

(Intd.) .....

*Addl. D. J.*

26-11-54

Paying-in-voucher for Rs. 60/- issued to Proctor for Defendant, Deputy Fiscal, Colombo.

(Intd.) .....

27-11-54

Proctor for Defendant files Kachcheri Receipt No. 005451 for Rs. 60/- and cites 1 and issued through Fiscal Western Province and 1 through Fiscal, Northern Province. 20

(Intd.) .....

#### T R I A L .

7-12-54

Mr. Advocate Ponnambalam, instructed by

Mr. V. Navaratnarajah for plaintiff.

Mr. Advocate Soorasangaran instructed by

Mr. C. C. Somasegaram for defendant.

No time owing to specially fixed trial. 30

Trial refixed for 11-5-55.

(Intd.) .....

7-12

*Eo. Die* ;

Requisition for Rs. 60/- issued to Mr. K. D. Denny Deputy  
Fiscal's Office, Colombo.

No. 1  
Journal  
Entries  
8-10-53 to  
10-6-59  
—continue

25-4-55

(Intd.) .....

Proctor for defendant moves to reissue summons on witness  
Asley J. A. Perera as it was not served on him last for reasons  
stated.

10

Allowed.

(Intd.) .....

*D. J.*

26-4-55

Extended and issued returnable 17-5-55.

(Intd.) .....

29-4-55

Mr. A. J. A. Perera, witness cited by Proctor for defendant,  
submits that the sum of Rs. 50/- deposited is not sufficient and  
moves that further sum of Rs. 25/- is required to attend Court  
and wants to know whether the amount would be deposited.

20

(1) Proctor for defendant to note and take necessary action.

(2) Inform the Proctor.

(Intd.) .....

*D. J.*

30-4-55

Proctor for defendant files additional list of witnesses and  
cites 2 and issued through Fiscal Western Province and 1 issued  
through Fiscal Northern Province.

(Intd.) .....

30 5-5-55

Reply sent.

9-5-55

Fiscal, Western Province states that the expenses of atten-  
dance of his Record Keeper as witness amounts to Rs. 65/- and  
requests that this amount be caused to be paid to him.

(1) Vide Journal entry of 29-4-55.

(2) Mention 11-5-55.

(Intd.) .....

*A. D. J.*

No. 1  
Journal  
Entries  
8-10-53 to  
10-6-59  
—continued. 11-5-55

10-5-55

Plaintiff's additional list of witnesses filed.

(Intd.) .....

T R I A L (2).

Mr. V. Navaratnarajah for plaintiff.

Mr. C. C. Somasegaram for defendant.

(1) Vide Journal entry of 9-5-55.

(2) Mentioned.

(3) Vide proceedings.

10

Further hearing on 20-7-55.

(Intd.) .....  
A. D. J.

12-5-55

Requisition issued as follows :—

Mr. A. J. A. Perera issued Rs. 50/-.

Mr. J. R. C. Peiris ,, Rs. 50/-.

(Intd.) .....

31-5-55

Proceedings submitted for signature please.

20

(Intd.) .....

19-7-55

Plaintiff's additional list filed.

(Intd.) .....

T R I A L (3).

20-7-55

Mr. V. Navaratnarajah for plaintiff.

Mr. C. C. Somasegaram for defendant.

(1) Vide proceedings.

(2) Addresses to be continued on 29-7-55.

30

(Intd.) .....

A. D. J.

20-7

T R I A L—*continued* (4)

No. 1  
Journal  
Entries  
8-10-53 to  
10-6-59  
—*continued.*

29-7-55

Mr. V. Navaratnarajah for plaintiff.

Mr. C. C. Somasegaram for defendant.

(1) Vide Journal entry of 20-7-55.

(2) Address.

(3) Vide proceedings.

(4) Judgment on 19-8-55.

(Intd.) .....  
A. D. J.

10

17-8-55

Plaintiff's documents P2 and P3 filed.

18-8-55

Defendant's documents D1—D8 filed.

(Intd.) .....

19-8-55

Mr. V. Navartnarajah for plaintiff.

Mr. C. C. Somasegaram for defendant.

Judgment on 25-8.

20

(Intd.)..... 9-8

25-8-55

D3 filed.

(Intd.) .....

25-8-55

Mr. V. Navaratnarajah for plaintiff.

Mr. C. C. Somasegaram for defendant.

(1) Vide Journal entry of 19-8-55.

30

(2) Judgment delivered in open Court in the presence of the defendant and the plaintiff's Proctor.

(Intd.) ..... 28-5

No. 1 5-9-55  
 Journal  
 Entries  
 8-10-58 to  
 10-8-59  
 —continued.

Mr. V. Navartnarajah, Proctor for plaintiff-appellant files petition of appeal together with notice of tendering security, Supreme Court Decree and Certificate in appeal and moves that the same be accepted and notice be issued on the defendant respondent and his Proctor.

Order.

(a) Accept petition of appeal.

(b) Enter in appeal-register.

(c) Issue notice of tendering security on the defendant-respondent and his Proctor returnable 15-9-55. 10

(Intd.) .....  
 A. D. J.

*Eo. Die.*

Notice of tendering security issued on defendant and his Proctor through Fiscal, N. P.

(Intd.) .....

15-9-55

Mr. V. Navaratnarajah for plaintiff.

Mr. C. C. Somasegaram for defendant. 20

(1) Vide Journal entry of 5-9-55.

(2) Return to notice of tendering security not received.

(3) The defendant K. A. Chelliahpillai is absent.

The defendant's Proctor Mr. C. C. Somasegaram is absent.

(4) Since received. Served on the defendant and his Proctor.

Security fixed at Rs. 200/- cash. Perfect security and issue notice of appeal.

(Intd.) ..... 30  
 15-9

17-9-55

Paying-in-voucher for Rs. 200/- issued to Proctor for plaintiff-appellant being costs for security in appeal.

No. 1  
Journal  
Entries  
8-10-53 to  
10-6-59  
—continued.

(Intd.) .....

17-9-55

Paying-in-voucher for Rs. 60/- issued to Proctor for plaintiff-appellant.

(Intd.) .....

17-9-55

10

Proctor for plaintiff-appellant files security bond with Kachcheri receipt for Rs. 200/- and moves that the same be accepted. He also tenders notice of appeal to be issued on Proctor for defendant respondent.

He further tenders Kachcheri receipt for Rs. 60/- for 3 copies of type-written brief.

(a) Accept security bond.

(b) Kachcheri Receipt No. 1656/082604 of 17-9-55 for Rs. 60/- filed.

20

(c) Issue notice of appeal on Proctor for defendant-respondent returnable 4-10-55.

(Intd.) .....

*A. D. J.*

20-9-55

Notice of appeal issued on Proctor for defendant-respondent through Fiscal Northern Province.

(Intd.) .....

4-10-55

Mr. V. Navaratnarajah for plaintiff-appellant.

Mr. C. C. Somasegaram for defendant-respondent.

30

(1) No return to notice of appeal on Proctor for defendant-respondent.

No. 1  
Journal  
Entries  
8-10-53 to  
10-6-59  
—continued.

(2) He is absent.

(3) Await and reissue if necessary for 26-10.

(Intd.) .....  
4-10

14-10-55

Return filed.

(Intd.) .....

26-10-55

Mr. V. Navaratnarajah for plaintiff-appellant.

Mr. C. C. Somasegaram for defendant-respondent.

10

(1) Vide Journal entry of 4-10-55.

(2) Notice of appeal served on Proctor for defendant-respondent.

(3) Proctor for defendant-respondent Mr. C. C. Somasegaram. He is absent.

Forward record.

(Intd.) .....  
26/10

6-7-56

Decree entered.

20

10-6-59

Record received from Registrar, Supreme Court. Appeal dismissed with costs.

Enter register.

(Intd.) .....  
A. D. J.

Plaint of the Plaintiff.

No. 2  
Plaint of  
the Plaintiff  
8-10-53

IN THE DISTRICT COURT OF JAFFNA.

No. 10403.

The Bank of Ceylon, Jaffna.

*Plaintiff.*

*Vs.*

K. Arumugam Chelliahpillai of Karanagar, presently of Hospital Street, Jaffna.

*Defendant.*

10

This 8th day of October, 1953.

The plaintiff of the plaintiff abovenamed appearing by Mr. V. Navaratnarajah, its Proctor, states as follows :—

1. The plaintiff is a Bank duly incorporated under Ordinance No. 53 of 1938 and having its principal office at No. 41, Bristol Street, Fort, Colombo, and a branch office at 242, Hospital Street, Jaffna, within the local limits of the jurisdiction of this Court.

20

2. The defendant resides and the cause of action hereinafter set forth arose at Jaffna within the local limits of the jurisdiction of this Court.

3. By a bond or writing obligatory bearing No. 3427 dated 20th day of February, 1952 and attested by Navaratnarajah, Jaffna Notary Public, executed at Jaffna aforesaid and duly registered the original whereof is filed herewith marked letter "A" and pleaded as part and parcel of this plaintiff, the defendant abovenamed bound himself, his heirs, executors and administrators to pay to the plaintiff Bank at Jaffna aforesaid the sum of Rs. 14,729/61 together with interest thereon at the rate of six per cent per annum to be computed from the date of the said bond.

30

4. And for securing to the plaintiff Bank the repayment of all sums of money payable under and by virtue or in respect of the said bond the defendant specially mortgaged and hypothecated to and with the plaintiff Bank as a Primary mortgage free from encumbrances whatsoever the land and premises in the schedule to the said bond and in the schedule hereto fully des-



cribed and all the estate, right, title, interest, property, claim and demand whatsoever of the defendant in to out of or upon the same.

5. Giving the defendant credit in a sum of Rs. 1,868/05 there is now due and owing to plaintiff Bank from the defendant the balance sum of Rs. 12,861/56 being principal and Rs. 600/21 being interest calculated at the rate of six per centum per annum from 1-1-53 till date hereof which sum of any part thereof the defendant has failed and neglected to pay though thereto often demanded.

10

Wherefore the plaintiff Bank prays :

(a) for judgment against the defendant in the sum of Rs. 13,461/77, together with interest on the sum of Rs. 12,861/56 at the rate of six per centum per annum from the date hereof till date of decree and thereafter on the aggregate amount of the decree at five per centum per annum till payment in full and costs of suit payable forthwith.

(b) that the lands and premises in the schedule hereto fully described together with the buildings standing thereon and all rights, privileges, easements, servitudes and appurtenances whatsoever to the said lands and premises belonging and all the estate, right, title, interest, property, claim and demand whatsoever of the defendant in to out of or upon the same be declared specially bound and executable for the repayment of the said sum and interest and costs of suit of the footing of the said mortgage bond No. 3427.

20

(c) that in the event of default being made in the payment of the said sum Rs. 13,461/77 interest and costs as aforesaid the lands and premises declared specially bound executable as aforesaid and more fully described in the schedule hereto be sold by public auction by the Fiscal, Northern Province, Jaffna or by any other person authorised in writing by the said Fiscal, the Fiscal being hereby directed.

30

1. To put up the said lands and premises for sale first at the amount of his valuation and if there be no bidders at that figure then at the aggregate amount of the plaintiff's claim interest and costs and if there be no bidders at that figure then immediately to the highest bidder.

2. To allow the plaintiff or any one else on his behalf to bid and purchase the said lands and premises at the said sale upon

40

such terms as to credit and otherwise as may be imposed by Court if the Court imposes any.

No. 2  
Plaint of  
the Plaintiff  
8-10-53  
—continued.

- (d) that the Fiscal, Northern Province, Jaffna be authorised directed to execute the necessary conveyance in due form of law in favour of the purchaser or purchasers at such sale on such purchase or purchasers complying with the conditions of sale and producing an order of this Court.
- 10 (e) that the proceeds of sale (or in the event of the plaintiff becoming the purchaser then the amount for which the plaintiff is given credit) be applied in satisfaction of the claim, interest and costs of this action.
- (f) that the Fiscal, Northern Province, Jaffna be directed to give quiet and vacant possession of the said lands and premises to the purchaser or purchasers thereof.
- (g) that the plaintiff be granted such other and further relief in the premises as to this Court shall seem meet.

(Sgd.) V. NAVARATNARAJAH,  
*Proctor for Plaintiff.*

**The Schedule above referred to :**

20 1. All that piece of land situated at Thangodai in the Parish of Karativu in the Islands Division, Jaffna District, Northern Province, called 'Kurunchithalvu' in extent 28 lachams V. C. (twenty eight lachams varagu culture) with house, well and other cultivated plantations and bounded on the East by the property of Karthigesu Ramalingam Sinnammah widow of Subramaniam North by the properties of Nagamuttu Arumugam and Valliammai widow of Kandiah, West by the properties of Kandiah Sockalingam and share holders, and South by the properties of the heirs of the late Valliammai wife of Ponniah and by the property of Visvanather Kumaravelu.

30 2. All that land situated at Thangodai aforesaid called Mahiavalai in extent 25½ lachams P. C. and bounded on the East by the property of Arunasalam Velupillai, North by Road, West by the lane and the property of Ramanather Kandiah and South by the property of Ramanather Kandiah and Arunasalam Velupillai.

(Sgd.) V. NAVARATNARAJAH,  
*Proctor for Plaintiff.*

**Answer of the Defendant.**

**IN THE DISTRICT COURT OF JAFFNA.**

No. 10403.

The Bank of Ceylon, Jaffna.

*Plaintiff.*

*Vs.*

K. Arumugam Chelliahpillai of Kanagar presently of Hospital Street, Jaffna.

*Defendant.* 10

On this 6th day of May, 1954.

The answer of the abovenamed defendant appearing by C. C. Somasegaram his Proctor states as follows :—

1. Answering to paragraph 1 of the plaint the defendant admits the averments contained therein.

2. Answering to paragraph 2 of the plaint the defendant admits the averment regarding residence of parties and denies the other averments contained therein.

3. Answering paragraphs 3 and 4 of the plaint the defendant while stating that by bond No. 208 dated the 27th day of February, 1951 the defendant agreed to pay to the plaintiff Bank Rs. 20,000/- and as security for the due payment thereof the defendant mortgaged and hypothecated to and with the plaintiff Bank the stock-in-trade lying at No. 108, Hospital Road and Chevrolet Lorry No. CL. 5172, that thereafter by deed No. 3427 dated 20th day of February 1952 and attested by V. Navaratnarahajah Notary Public the defendant created a hypothecary charge over the lands described in the schedule to the plaint by way of further and additional security for the payment of Rs. 14,792/61 then due on the said bond No. 208, and that no claim for the payment of any sum of money can be made on the said deed No. 3427 denies the other averments contained therein. 20 30

4. Answering to paragraph 5 of the plaint the defendant denies the averments contained therein.

5. Further answering the defendant states that the said Lorry No. CL. 5172 was seized on the 29th day of July 1953 under writ issued in case No. 22280/M D. C. Colombo subject to the mortgage created by the said bond No. 208, that the plaintiff Bank failed to take steps to realise the amount due under the

said bond No. 208, that the said Lorry No. CL. 5172 was sold under the said writ on the 7th day of March 1953 subject to the said mortgage and purchased by certain M. R. Peiris, that the plaintiff Bank through its representative wrongfully consented to the Fiscal delivering the said lorry to the said M. R. Peiris who had purchased the said lorry subject to the said mortgage and that thereby the said bond No. 208 and the hypothecary charge created by the said deed No. 3427 by way of further and additional security have been discharged in law.

No. 3  
Answer  
of the  
Defendant  
6-5-54  
—continued.

10

6. The defendant further states that the plaintiff Bank is not entitled in law to proceed to sell the said lands which were hypothecated by way of further and additional security without proceeding to sell the said lorry and the said stock-in-trade which were hypothecated as a first charge to the plaintiff Bank, that the plaintiff Bank having agreed to M. R. Peiris taking delivery of the said lorry without receiving the money due has lost the right to proceed against the additional security created by the said deed No. 3427, that no action is maintainable in law on the said deed No. 3427, as it merely created an additional hypothecary charge to secure the liability created by the said bond No. 208 and that the plaintiff Bank having abandoned and or released the hypothecary charge created by the said bond No. 208 is not entitled in law to enforce the additional hypothecary charge created by the said deed No. 3427.

20

Wherefore the defendant prays :—

- (1) that the plaintiff's action be dismissed.
- (2) that the liability created by the said bond No. 208 and the hypothecary charge created by the said deed No. 3427 be declared discharged.
- (3) for costs and for such other and further relief as to this Court shall seem meet.

30

(Sgd.) C. C. SOMASEGARAM,  
*Proctor for Defendant.*

## No. 4.

## Proceedings before the District Court.

## Issues Framed.

10403 D. C. Jaffna.

11-5-55

Defendant present.

Mr. Advocate C. Ponnambalam, instructed by Mr. V. Navaratnarajah, for plaintiff.

Mr. Advocate Kulasingham with Mr. Advocate Soorasangaram, instructed by Mr. C. C. Somasegaram for defendant. 10

Mr. Advocate Ponnambalam suggests the following issues :—

- (1) What amount is due to the plaintiff Bank on the bond obligatory referred to in paragraph 3 of the plaint ?

Mr. Advocate Soorasangaram suggests the following issues:—

- (2) Is any money due to the plaintiff on bond No. 3427 of 20-2-52 sued upon in this case ?
- (3) Did the defendant, by the said bond No. 3427 give further and additional security for the re-payment of the sum of Rs. 14,792/61 with interest at six per cent per annum which is due to the plaintiff on bond No. 208 of 27-2-51 ? 20
- (4) If so, can any claim for the recovery of money be made on the said bond No. 3427 ?
- (5) If not, is the plaintiff's action maintainable ?
- (6) Did the defendant, by bond No. 208 of 27-2-51, agree to pay Rs. 20,000/- and interest thereon and, as security for the payment thereof, hypothecate the stock-in-trade lying at 108, Hospital Road, Jaffna, and lorry No. CL. 5172 ?
- (7) If so, can the plaintiff maintain this action without seeking to enforce the hypothecation contained in the said bond No. 208 ? 30
- (8) Was lorry No. CL. 5172 seized and sold in case No. 22280/M D. C. Colombo, subject to mortgage in favour of the plaintiff Bank ?

- (9) Has the plaintiff Bank failed to receive the money due from the purchaser at the said sale ?
- (10) Was the said lorry delivered to the purchaser at the said sale with the consent and approval of the plaintiff Bank ?
- (11) If any of the issues (8) (9) and (10) is answered in the affirmative, have the said bond No. 208 and the hypothecary charges created by the said bond No. 208 and by bond No. 3426 been discharged in law ?
- (12) If so, is the plaintiff's action maintainable ?  
I accept all the issues.

No. 4  
Proceedings  
before the  
District  
Court.  
Issues  
Framed  
11-5-55  
—continued.

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(Sgd.) Illegibly,

A. D. J.

11-5-55

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No. 5.

Defendant's Case.

Mr. Advocate Soorasangaram calls :

J. R. C. PEIRIS, Sworn, Record Keeper, Fiscal's Office,  
Colombo.

No. 5  
Defendant's  
Case  
11-5-55.  
Evidence of  
J. R. C.  
Peiris  
Examina-  
tion in  
Chief

20

I was summoned to produce certain documents in connection with the sale of lorry No. CL. 5172 under writ issued in case No. 22480/M D. C. Colombo. The lorry was seized by the Fiscal, Western Province, under a writ in that case, subject to mortgage in favour of the Bank of Ceylon.

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I produce a copy of the sale report dated 17-3-53 (D1) I produce a certified copy of the proceedings of sale held on 7-3-53 under the writ in that case (D2) D2 shows that the purchaser was informed of the existence of the mortgage to the Bank of Ceylon for a sum of Rs. 12,861/56 and further interest on a mortgage of the lorry. D2 was signed by the purchaser M. R. Peiris by the Auctioneer, who conducted the sale, viz. M. V. C. Fernando, and Mr. Ashley J. A. Perera, representative of the Bank of Ceylon (Mr. Advocate Ponnambalam objects to this witness speaking with regard to the signatures of Messrs. Peiris and Fernando, and J. A. Perera).

Mr. Advocate Soorasangaram states that he will be calling Mr. Ashley J. A. Perera.

No. 5  
Defendant's  
Case  
11-5-55  
Evidence of  
J. R. C.  
Peiris  
Examina-  
tion in  
Chief  
—continued.

Witness states that he is familiar with the signature of Mr. M. V. C. Fernando.

I therefore over rule the objection.

(Sgd.) Illegibly,  
**A. D. J.**  
11-5-55

Examination-in-chief (continued).

I identify the signature of Mr. M. V. C. Fernando who was the Auctioneer appointed by the Fiscal's Department, he is the Chief Clerk of the Department now. D2 is really a receipt granted by the purchaser. According to D2 the purchaser received the lorry together with its accessories. D2 also shows that Ashley J. A. Perera was the representative of the Bank of Ceylon and he was present and consented to the purchaser taking delivery of the lorry. I produce letter dated 30-1-53 (D3) sent to the Fiscal, Western Province, by Mr. V. Navaratnarajah as Proctor for the Bank of Ceylon. (Mr. Advocate Ponnambalam objects to the production of D3, unless the writer of it is called.

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Mr. Advocate Soorasagaram undertakes to call him as a witness.)

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Examination-in-chief (continued).

(Shown letter dated 5-3-53 (D4)). This is a letter written by the Fiscal, Western Province, to K. A. Chelliahpillai (defendant) (shown letter dated 19-3-53 (D5)). This is another letter written by the Fiscal, Western Province, to K. A. Chelliahpillai. (Shown D5) Mr. S. K. Sathasivam has signed this letter for the Fiscal, Western Province. This Sathasivam was the Chief Clerk of the Deputy Fiscal's Office, Colombo, and I am familiar with his handwriting and signature. (Mr. Advocate Ponnambalam objects to the production of D5, unless its writer is called as a witness.)

30

ORDER

I over rule the objection as the witness is familiar with the signature of the person who has signed it.

(Sgd.) Illegibly,  
**A. D. J.**  
11-5-55

Examination-in-chief (continued).

The certified copies of D1 and D2 were certified by Mr. S. K. Sathasivam for the Fiscal, Western Province. I identify his signature in D1 and D2.

XXD.

I do not know anything about the sale of this lorry. Apart from what I see in the minutes in the file I know nothing personally.

Evidence of  
J. R. C.  
Peiris  
Cross-  
Examina-  
tion

Re-xd : Nil.

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(Sgd.) Illegibly,

A. D. J.

11-5-55

A. J. A. PERERA, sworn, Sub-Accountant, Bank of Ceylon, Colombo.

Evidence of  
A. J. A.  
Perera  
Examina-  
tion in  
Chief

(Shown the original of D2) The word 'present' was written by Mr. M. V. C. Fernando. Thereafter he handed the document to me and I wrote the other words which appear under the word 'present'.

20

I was present at the sale of the lorry No. CL. 5172, I was instructed by the Bank of Ceylon to be present at the sale of the lorry. I represented the Bank of Ceylon at the sale. This document was written in my presence and signed by Mr. M. R. Peiris, the purchaser of the lorry No. 5172. The mortgage in favour of the Bank was disclosed at the sale and the amount due to the Bank of Ceylon on the mortgage is referred to in D2 as Rs. 12,861/56. I was authorised by the Bank of Ceylon to consent to Mr. M. R. Peiris, the purchaser, taking delivery of the lorry and its accessories. Both Mr. M. R. Peiris, the purchaser, and the auctioneer Mr. M. V. C. Fernando signed D2 in my presence (shown letter dated 12-3-53 (D6)). This is a letter written by the Bank of Ceylon to the defendant.

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To Court :

This letter has been signed by the Agent of the Bank I know his signature.

Mr. Advocate Ponnambalam objects to the Production of D6, unless its writer is called as a witness.



## ORDER

I over rule the objection as the witness states that he knows the writer's signature and can identify the signature on the document.

(Sgd.) Illegibly,  
A. D. J.  
11-5-55

Evidence of  
A. J. A.  
Perera  
Cross-  
Examina-  
tion

XXD.

The loans officer authorised me to represent the Bank of Ceylon at the sale.

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Q. You do not know whether the loans officer was authorised by the Bank of Ceylon ?

A. I do not know.

I wrote this document D2 at the request of the Fiscal's Officer. I did not know Mr. M. R. Peiris earlier and I do not know him even now. I was asked to be present at the sale. I was not authorised by the loans officer to deliver the lorry to Mr. M. R. Peiris, the purchaser.

Re-xd. Nil.

(Sgd.) Illegibly, 20  
A. D. J.  
11-5-55

Evidence of  
K. A.  
Chelliahpillai  
Examina-  
tion in  
Chief

K. A. CHELLIAHPILLAI, Affirmed, 43, Trader, Karainagar.

I am the defendant. I executed bond No. 208 of 27-2-51 (D7) by which I agreed to pay Rs. 20,000/- to the plaintiff Bank. To secure the payment of that sum with six per cent interest I hypothecated lorry No. CL. 5172 and the stock-in-trade at No. 108, Hospital Road, Jaffna, and also, as collateral security, I handed over the title deeds in respect of the two lands described in schedule in the plaint. Later, by another bond executed in 1951, I agreed to mortgage the lands referred to in the schedule if called upon to do so by the Bank. After that by deed No. 3427 of 20-2-52, I gave further and additional security for the payment of Rs. 14,792/61 and interest at six per cent. The two lands given as security are the two lands referred to in the schedule in the plaint. Thereafter lorry No. CL. 5172 was seized in Case No. 22280/M D. C. Colombo I was present at the sale. The lorry

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was seized and sold subject to the mortgage in favour of the plaintiff Bank. It was announced that the purchaser should pay Rs. 12,861/50 to the Bank and the representative of the Bank, viz. the last witness, was present at that time. There was a bid of Rs. 1,650/- over and above Rs. 12,861/56. In all it was Rs. 14,000/- It was announced that the purchaser of the lorry should deposit Rs. 12,861/56 to the credit of the Bank before he removed the lorry. The Bank and the Fiscal also accepted that. The purchaser was Mr. M. R. Peiris. Thereafter I thought that the purchaser would have deposited the money and removed the lorry. There were about ten people ready to bid at the sale. The lorry was worth Rs. 15,000/- at that time. The second bid was Rs. 14,450/-. Later I learnt that the Bank had consented to deliver the lorry to Mr. M. R. Peiris. I wrote about it to the Fiscal and to the Bank. As a result of my writing to the Fiscal and to the Bank of Ceylon I received D6 from the Bank of Ceylon. By D6 the Bank of Ceylon says that the lorry was sold for Rs. 1,650/- subject to mortgage and that the purchaser Mr. M. R. Peiris, had offered to pay the figure Rs. 5,850/- and had requested the Bank to release the lorry from the mortgage, but I was not agreeable to it. As the Bank did not get the money due to it I have sustained damages. The purchaser of the lorry was liable to pay the amount due to the Bank. Now the purchaser having paid Rs. 1,650/- is using the lorry without paying the amount due under the mortgage. I was not consulted before the Bank consented to deliver the lorry to Mr. M. R. Peiris. By D6 the Bank wrote to me that Mr. M. R. Peiris had offered to pay Rs. 5,850/- to the Bank and had requested the Bank to release the lorry from the mortgage. The Bank was prepared to do so and wanted my consent, but I was not agreeable. (Shown D3) This letter was sent to me by Mr. V. Navaratnarajah, Proctor for the plaintiff Bank. I produce letter dated 30-1-53 sent to me by Mr. V. Navaratnarajah, Proctor for the plaintiff Bank (D8). D8 has been signed by Mr. V. Navaratnarajah and a copy of it has been sent to the Fiscal, Western Province. By D8 the Proctor for the Bank of Ceylon informs the Fiscal that a sum of Rs. 12,861/56 is due on the bond executed by me in favour of the Bank.

Evidence of  
K. A.  
Chelliahpillai  
Examina-  
tion in  
Chief  
—continued.

(Sgd.) Illegibly,  
A. D. J.  
11-5-55

Further hearing on 20-7-55.

(Sgd.) Illegibly,  
A. D. J.  
11-5-55

**Proceedings before the District Court.**

D. C. Jaffna Case No. 10403.

20-7-1955.

Mr. Advocate C. Ponnambalam instructed by Mr. V. Navaratnarajah for the plaintiff.

Mr. Advocate Kulasingham with Mr. Advocate Soorasangaram instructed by Mr. C. C. Somasegaram for the defendant.

K. ARUMUGAM CHELLIAHPILLAI, recalled, Affirmed.

XXD.

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Evidence of  
K. A.  
Chelliahpillai  
Cross-  
Examina-  
tion

I purchased Lorry No. CL. 5172 in 1951. It was a 3 ton Chevrolet Lorry. I bought the lorry for Rs. 12,000/-. With the building of the body the lorry cost me Rs. 16,000/-. I bought it new, I deny that I purchased this lorry from Kandar Arumugam. Shown Certificate of Registration, Kandar Arumugam Chelliahpillai in the certificate is my name. Mr. Ponnambalam marks the certificate of Registration (P2). It bears the endorsement in favour of the Bank of Ceylon. I mortgaged the lorry in favour of the plaintiff Bank by deed No. 4451. After the mortgage the lorry continued to be in my possession. At the time of the seizure in D. C. Colombo in case No. 22280/M the lorry was in my possession. The lorry was sold subject to a mortgage. After the sale M. R. Peiris took possession of the lorry. The Fiscal took over possession from me and handed the lorry to M. R. Peiris. Shown letter dated 31-1-1952. This is my signature. I do not understand English. I produce the letter written by me to the Agent, Bank of Ceylon, Jaffna, marked P3. The amount due at the time of the seizure was Rs. 12,861/50. I deny that I wanted to avoid payment due from me. There are two or three decrees against me. It is not true that I am indebted in a sum of Rs. 100,000/-. My debts amounts to Rs. 30,000/- I owed Rs. 10,000/- to Messrs. Hunter & Co., Colombo on a decree. I have executed a secondary mortgage of the lands which are the subject matter of this action to Sockalingam. I have executed P1 in favour of the Plaintiff's Bank in respect of the stock-in-trade at No. 108, Hospital Road, Jaffna. Also as collateral security I handed over the title deeds in respect of two lands referred to in the plaint. By the Bond I agreed to pay the plaintiff Bank the decree under which the lorry was seized. It was a money decree. At the time I executed the bond P1 the sum Rs. 14,000/- was due to the Bank and it was for security that this bond was given. I did not borrow money on P1. I was present at the Fiscal's sale

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of the lorry. I do not know when the lorry was handed over to Peiris. I have already stated that the lorry was worth Rs. 15,000/- I bought the lorry in 1949 for the sum of Rs. 12,000/- About 6 months after my purchase I was offered Rs. 18,000/-. This was due to the scarcity of lorries at that time. After the seizure I went and spoke to the Agent of the Bank about the seizure of the lorry. I wanted the Agent to inform the Fiscal. In accordance with my request the letter D1 was written by the plaintiff Bank's Proctor. The Fiscal valued the lorry at Rs. 13,000/- or Rs. 14,000/- I do not know whether the lorry was valued at Rs. 7,000/- or Rs. 8,000/-.

Evidence of  
K. A.  
Chelliahpillai  
Cross  
Examina-  
tion  
—continued.

Rexd.

At the time of the seizure the lorry had a route licence from Jaffna to Warakapola. I was not in Colombo at the time of the seizure. I was present at the sale. I am not aware of the Fiscal handing over the lorry to anyone. Shown letter dated 12-3-53. This is a letter written by the Bank of Ceylon. By this letter they requested me to accept the sum of Rs. 5,800/- from Peiris. I was not agreeable to the suggestion made by the Bank. I do not know whether the Bank received any money from M. R. Peiris.

Evidence of  
K. A.  
Chelliahpillai  
Re-examina-  
tion

(Sgd.) Illegibly,  
Additional D. J.  
20-7-55

A. S. ARUMUGAMPILLAI, Affirmed 43 years, Trader, Colombo. I represent the firm called "A. S. Sanagarampillai and Brothers" We have a number of departments of business in Colombo. We have branches in Jaffna and other parts of Ceylon. I know lorry No. CL. 5172. I was present at the sale of this lorry in case No. 22280/M D. C. Colombo. I went to Colombo to purchase a lorry. At that time the lorry was worth about Rs. 15,000/- or Rs. 16,000/- I knew about the mortgage at the time of the sale. The amount was mentioned as Rs. 12,000/-. I remember it was about Rs. 12,000/-. The lorry was purchased by a Sinhalese gentleman. I do not know his name.

Evidence of  
A. S. Arumu-  
gampillai  
Examina-  
tion in Chief

XXD.

I am from Karainagar. The 1st defendant is also from Karainagar. I did not go with Chelliahpillai to Colombo for the sale, but I was present at the sale. I do not know at how much the lorry was valued by the Fiscal. It was sold with route licence.

Evidence of  
A. S. Arumu-  
gampillai  
Cross-  
Examina-  
tion

Evidence of  
A. S. Arumu-  
gampillai  
Re-examina-  
tion

Rexd.

I heard that the lorry was under some mortgage and that it was Rs. 12,000/- I was told that we should offer above Rs. 12,000/- and the Rs. 12,000/- must be paid to the Bank.

(Sgd.) Illegibly,  
*Additional District Judge.*  
20-7-59

Evidence of  
V. Nava-  
ratnarajah  
Examina-  
tion in Chief

V. NAVARATNARAJAH, Affirmed, 42, Proctor and Notary Public, Jaffna.

Shown letter marked D8, this was written by me. It purports to be a letter addressed to the Fiscal Western Province. The defendant came to my office. D8 was written by me as a result of the instructions given to me by the Bank of Ceylon and the defendant. The defendant accompanied me to my office. The defendant wanted a copy of this letter. 10

XXD. Nil.

Mr. Soorasangaran closes his case.

(Sgd.) Illegibly,  
*Additional District Judge.*  
20-7-55 20

No. 6A  
Plaintiff's  
Case  
20-7-55

No. 6A.

Plaintiff's Case.

Evidence of  
H. M.  
Saldin  
Examina-  
tion in Chief

H. M. SALDIN, Agent, Bank of Ceylon, Jaffna.

I produce P1, P2 and P3. I say that money is due to the Bank of Ceylon from the defendant.

Evidence of  
H. M.  
Saldin  
Cross-  
Examina-  
tion

XXD.

I have been Agent of the Bank of Ceylon, Jaffna during the past one year. D6 was written by the previous Agent in charge of the Jaffna Branch.

Rexd. Nil.

(Sgd.) Illegibly.  
20-7-55

Mr. Ponnambalam closes his case reading in evidence P1 to P3. 30

**No. 7.**

**No. 7  
Addresses  
Court  
20-7-55**

**Addresses to Court.**

Mr. Advocate Soorasangan addresses Court. And cites South African Law by Lee at page 47 Article 214.

Also section 105 of the Mortgage Act No. 6 of 1949.

Addresses to be continued on 29-7-1955.

(Sgd.) Illegibly,  
*Additional District Judge.*  
Jaffna, 20-7-55

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**No. 8.**

**No. 8  
Proceeding  
before the  
District  
Court  
Addresses  
29-7-55**

**Proceeding before the District Court.****Addresses.**

10403 D. C. Jaffna.

29-7-55.

Further hearing—Addresses.

Same appearance as on the last date.

Mr. Advocate Kulasingham Addresses Court and refers to Mortgage Act No. 6 of 1949. He cites Lee's South African Law at page 55, Article 255. Section 105 (4) of the Mortgage Act. Lee's South African Law page 56, Articles 256 and page 47, Article 214.

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Mr. Advocate Ponnambalam Addresses Court. He refers to section 102 of the Mortgage Act No. 6 of 1949.

Judgment on 19-8-55.

(Sgd.) Illegibly,  
*Additional District Judge.*  
29-7-55

**Judgment of the District Court.**

10403 D. C. Jaffna.

25-8-55.

**JUDGMENT.**

The plaintiff seeks to recover a sum of money lent to the defendant. The action is based on the document P1, in respect of a sum of money which was the balance due on a loan given earlier, on the document D7. It is not denied that this balance sum of money has not been paid by the defendant, but it is contended that no claim can be made on P1 as it merely created a hypothecary charge by way of further and additional security. The defendant states further that his lorry which had been given as security in respect of D7 had been sold in execution of a decree in another case, subject to the mortgage and that the plaintiff had failed to take the necessary steps to realise the amount due to it, but wrongly consented to the delivery of the lorry to the purchaser.

10

The case proceeded to trial on the following issues :—

- (1) What amount is due to the plaintiff Bank on the bond obligatory referred to in paragraph 3 of the plaint ?
- (2) Is any money due to the plaintiff on bond No. 3427 of 20-2-1952 sued upon in this case ?
- (3) Did the defendant, by the said bond No. 3427, give further and additional security for the repayment of the sum of Rs. 14,792/61 with interest at six per cent per annum, which is due to the plaintiff on bond No. 208 of 27-2-51 ?
- (4) If so, can any claim for the recovery of money be made on the said bond No. 3427 ?
- (5) If not, is the plaintiff's action maintainable ?
- (6) Did the defendant by bond No. 208 of 27-2-1951 agree to pay Rs. 20,000/- and interest thereon and as security for the payment thereof hypothecated the stock-in-trade lying at No. 108, Hospital Road, Jaffna, and lorry No. CL. 5172 ?
- (7) If so, can the plaintiff maintain this action without seeking to enforce the hypothecation contained in the said bond No. 208 ?

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- No. 9  
Judgment  
of the  
District  
Court  
25-8-55  
—continued.
- (8) Was lorry No. CL. 5172 seized and sold in case No. 22280/M D. C. Colombo subject to mortgage in favour of the plaintiff Bank ?
- (9) Has the plaintiff Bank failed to receive the money due from the purchaser at the said sale ?
- (10) Was the said lorry delivered to the purchaser at the said sale with the consent and approval of the plaintiff Bank ?
- 10 (11) If any of the issues (8) (9) (10) is answered in the affirmative, have the said bond No. 208 and the hypothecary charges created by the said bond No. 208 and by bond No. 3427 been discharged in law ?
- (12) If so, is the plaintiff's action maintainable ?

20 The main question for consideration is whether any money is due to the plaintiff on the document P1. The recital in P1 is with regard to the payment of Rs. 20,000/- borrowed on D7. The stock-in-trade and the lorry of the defendant were hypothecated by D7. Thereafter at the instance of the plaintiff further and additional security was furnished by P1. The document P1 does not expressly contain a promise to pay any money. A hypothecary bond is normally in two parts, viz. the promise and the security. P1 contain only the security. It cannot, therefore, be enforceable in law without the promise, which is contained in D7. It seems to me, therefore, that the plaintiff's proper remedy was to sue the defendant on D7 and combine P1 with it in order to avail itself of the additional security.

It may be said that P1 contain an implied promise to pay the amount due at that time. A promise can be implied in P1 only if there is no other express promise. P1, however refers expressly to the promise in D7. The primary obligation is contained in D7.

30 It is true that the plaintiff may choose to avail itself of any security furnished by the defendant and need not necessarily seek to recover the money due, by means of the property originally secured by the document D7. That does not, however, mean that the plaintiff is entitled to sue the defendant on a document which merely provides additional security in respect of a debt created by the earlier document D7.

40 The defendant admits in P1, that a sum of Rs. 14,792/61 is due and furnishes additional security for the payment of this sum, but this sum is actually due on the bond D7, as is clear from P1 itself.



It was contended that D7 became merged in P1 and that the action must therefore be instituted on P1. This contention is negatived by the proviso in P1 that nothing herein contained shall in anywise affect the several terms and conditions of the bond or obligation (D7) or the rights and remedies of the Bank thereunder, but these presents shall be deemed and taken to be a further security for all monies due and payable under and by virtue of or in respect of the said bond or obligation.

I hold that the money is due not on P1, but on D7 and that the plaintiff's action on P1, is, therefore, not maintainable.

10

It was also urged on behalf of the defendant that the plaintiff was not entitled to maintain this action without seeking to enforce the hypothecation contained in the earlier bond D7. I do not think the plaintiff is bound to avail itself of the earlier hypothecation first as it is entitled to choose any security it likes.

It was further submitted that the bond D7 had been discharged by reason of the conduct of the plaintiff in allowing the lorry to be delivered to the purchaser without obtaining the money due to the plaintiff at that time. This contention is based on section 105 of the Mortgage Act, No. 6 of 1949. Section 105 (1) (b) declares a mortgagee entitled to make an application to be added as a party to the proceedings in which the seizure was effected. The fact that mortgagee is entitled to do something does not mean that he is bound to do so and that he loses his other rights because he failed to do something which he was entitled to do.

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The evidence shows that the plaintiff's Agent consented to the lorry being delivered to the purchaser. Although the Agent states in cross-examination that he was not authorised by the Loans Officer to deliver the lorry to the purchaser, he stated earlier in examination-in-chief that he was authorised by the Bank of Ceylon to consent to the delivery of possession of the

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lorry to the purchaser. As he was the plaintiff's Agent the plaintiff is bound by his acts. A certain amount of loss has been caused to the defendant by the plaintiff's conduct in this respect, but this did not affect the plaintiff's right to recover the money from the defendant, in view of my finding that the plaintiff was not bound to recover the money from the purchaser of one of the items of security.

No. 9  
Judgment  
of the  
District  
Court  
25-8-55  
—continued.

I answer the issues as follows :—

- 10
- (1) Nil
  - (2) No
  - (3) Yes
  - (4) No
  - (5) No
  - (6) Yes
  - (7) Yes
  - (8) Yes
  - (9) Yes
  - (10) Yes
  - (11) No
  - 20 (12) Does not arise

I dismiss the plaintiff's action with costs.

(Sgd.) Illegibly,  
*Additional District Judge.*

25-8-55

No. 10  
Decree  
of the  
District  
Court  
25-8-55

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No. 10.

Decree of the District Court.

IN THE DISTRICT COURT OF JAFFNA.

DECREE.

No 10403.

The Bank of Ceylon, Jaffna.

*Plaintiff.*

*Vs.*

K. Arumugam Chelliahpillai of Karainagar presently of  
Hospital Road, Jaffna.

*Defendant.*

10

This matter coming on for final disposal before A. E. R. Corea Esquire, Additional District Judge, Jaffna, on the 25th day of August 1955 in the presence of Mr. Advocate C. Ponnambalam instructed by Mr. V. Navaratnarajah, Proctor on the part of the plaintiff and Mr. Advocate A. V. Kulasingham with Mr. Advocate Soorasangaran instructed by Mr. C. C. Somasegaram, Proctor on the part of the defendant.

It is ordered and decreed that the plaintiff's action be and the same is hereby dismissed with costs.

20

The 25th August 1955.

(Sgd.) Illegibly,  
*Additional District Judge.*  
Jaffna, 6-7-56

Drawn by :

(Sgd.) Illegibly,  
*Proctor for Plaintiff.*

No. 11.

No. 11  
Petition of  
Appeal  
to the  
Supreme  
Court  
5-9-55**Petition of Appeal to the Supreme Court.**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

Tendered at 2-20 p.m.  
on 5-9-55.(Sgd.) Illegibly,  
*Secretary.*

The Bank of Ceylon, Jaffna.

*Plaintiff-Appellant.*

Vs.

10 No. D. C. Jaffna 10403.D. C. (F) 693M  
1956.K. Arumugam Chelliahpillai of Karainagar,  
presently of Hospital Road, Jaffna.*Defendant-Respondent.*

On this 5th day September, 1955.

To His Lordship the Chief Justice and the other Judges of  
the Honourable the Supreme Court of the Island of Ceylon.20 The petition of appeal of the plaintiff-appellant abovenamed  
appearing by V. Navaratna Rajah, its Proctor, states as follows :-

1. The Plaintiff-appellant which is a Bank duly incorporated under Ordinance No. 53 of 1938, filed this action against the Defendant-respondent to obtain a hypothecary decree in respect of certain lands and premises specially mortgaged and hypothecated to the plaintiff-appellant by the defendant-respondent upon Bond No. 3427 of 20th February, 1952, for the repayment of a sum of Rs. 14,792/61, which was admitted by the defendant-respondent to be due to the plaintiff-appellant.

30 2. The defendant-respondent in his answer stated that he had by Bond No. 208 of 27th February, 1951 mortgaged and hypothecated to the plaintiff-appellant his stock-in-trade lying at No. 108, Hospital Road, Jaffna and a Chevrolet Lorry No. CL. 5172 for the payment of a sum of Rs. 20,000/- and that the bond in suit was executed by way of further and additional security for the payment of the sum of Rs. 14,792/61 then due on Bond No. 208.

3. The defendant-respondent further stated that the said Lorry was seized on 29th July, 1953 under writ issued in D. C. Colombo Case No. 22280/M subject to the mortgage created by the said Bond No. 208, that the plaintiff-appellant had failed to take steps to realise the amount due under the said Bond and that the plaintiff-appellant had through its representative wrongfully consented to the Fiscal delivering the said lorry to the purchaser at the sale held in pursuance of the said writ.

4. On the basis of the above averments the defendant-respondent took up the position that the said Bonds No. 208 and No. 3427 were thereby discharged in law and that the plaintiff-appellant was not entitled to sell the lands hypothecated by way of further and additional security without first selling the lorry and the stock-in-trade hypothecated by Bond No. 208.

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5. The case proceeded to trial on the following issues :—

- (1) What amount is due to the plaintiff-bank on the bond obligatory referred to in paragraph 3 of the plaint ?
- (2) Is any money due to the plaintiff on bond No. 3427 of 20-2-52 sued upon in this case ?
- (3) Did the defendant, by the said bond No. 3427 give further and additional security for the re-payment of the sum of Rs. 14,792/61 with interest at six per cent per annum, which is due to the plaintiff on bond No. 208 of 27-2-51 ?
- (4) If so, can any claim for the recovery of money be made on the said bond No. 3427 ?
- (5) If not, is the plaintiff's action maintainable ?
- (6) Did the defendant, by bond No. 208 of 27-2-1951, agree to pay Rs. 20,000/- and interest thereon and, as security for the payment thereof, hypothecate the stock-in-trade lying at 108, Hospital Road, Jaffna and lorry No. CL. 5172 ?
- (7) If so, can the plaintiff maintain this action without seeking to enforce the hypothecation contained in the said bond No. 208 ?
- (8) Was Lorry No. C. L. 5172 seized and sold in case No. 22280/M D. C. Colombo subject to mortgage in favour of the plaintiff Bank ?

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- (9) Has the plaintiff bank failed to receive the money due from the purchaser at the said sale ?
- (10) Was the said lorry delivered to the purchaser at the said sale with the consent and approval of the plaintiff bank ?
- (11) If any of the issues (8) (9) and (10) is answered in the affirmative, have the said bond No. 208 and the hypothecary charges created by the said bond No. 208 and by bond No. 3427 been discharged in law ?
- (12) If so, is the plaintiff's action maintainable ?

No. 11  
Petition of  
Appeal  
to the  
Supreme  
Court  
5-9-55  
—continued.

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6. The learned District Judge by his judgment dated 25th August 1955 held in favour of the defendant-respondent and dismissed the plaintiff-appellant's action with costs.

7. Being aggrieved by the said judgment and order of the learned District Judge the plaintiff-appellant begs to appeal therefrom to your Lordship's Court on the following among other grounds which will be urged by Counsel at the hearing of this appeal.

(a) The said judgment is contrary to law and against the weight of the evidence adduced at the trial.

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(b) The learned District Judge has erred in holding that P1 (Bond No. 3427) is not enforceable in law without the promise which is contained in D7 (Bond No. 208) being embodied in the Bond P1 sued upon in this case.

(c) The learned District Judge has misdirected himself in regard to the nature of a mortgage and hypothecation in Roman Dutch Law and in regard to the right of a mortgagee upon a hypothecation to sue for a hypothecary decree only, as distinct from a money decree based upon a promise to pay.

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(d) The learned District Judge has failed to give effect to or consider the provisions of the mortgage act of 1949 and more particularly Section 46 of that Act in relation to the facts of this case.

(e) The learned District Judge has erred in holding that the plaintiff-appellant is bound by the act of its agent in consenting to the lorry being delivered to the purchaser notwithstanding that the said agent was not authorised to do so. In any event the said matter is irrelevant and has no bearing on

the rights of the plaintiff-appellant in this case, there being no duty cast upon the plaintiff-appellant in law to prevent the delivery of the said lorry to the purchaser.

- (f) It is submitted that in respect of the amounts which the defendant-respondent had borrowed from the plaintiff-appellant the defendant-respondent had given two kinds of security, namely that on Bond No. 208 (D7) and Bond No. 3427 (P1) and that the plaintiff-appellant was entitled to select any of the securities given by the defendant-respondent for the purpose of recovering what was admittedly due to the plaintiff-appellant. 10
- (g) It is submitted in law the only effective legal remedy available to the plaintiff appellant in view of Bond No. 3427 (P1) being a mortgage of immovable property was a hypothecary action upon the said bond, and that in the circumstances this action was properly constituted and the plaintiff-appellant was entitled to judgment.
- (h) In any event it is submitted that in Bond No. 3427 (P1) sued upon there was an admission by the defendant-respondent that the sum of Rs. 14,792/61 was due and owing to the plaintiff-appellant and this was sufficient grounds for the plaintiff-appellant to claim repayment of the said sum in view of the fact that the defendant-respondent accepted the position that the amount was still due. 20
- (i) It is submitted that the Bond No. 3427 (P1) is evidence of an earlier oral promise by the defendant-respondent to pay and in the circumstances the plaintiff-appellant was entitled to maintain this action relying on such oral promise.

Wherefore the plaintiff-appellant prays that Your Lordships' Court be pleased to set aside the said judgment and order of the learned District Judge and to enter judgment for the plaintiff-appellant as prayed for in the plaint with costs in both Courts and for such other and further relief in the premises as to Your Lordships' Court shall seem meet. 30

(Sgd.) V. Navaratnarajah  
*Proctor for Plaintiff-Appellant.*

(Sgd.)

C. G. WEERAMANTRY.

H. W. JAYAWARDANA.

*Advocates,*

## Judgment of the Supreme Court.

No. 12  
Judgment  
of the  
Supreme  
Court  
29-5-59

S. C. No. 693.

D. C. (F) Jaffna No.10403.

*Present :* Basnayake, C. J. and Sansoni, J.

*Counsel :* H. W. Jayawardana, q.c., with C. G. Weeramantry,  
C. P. Fernando and L. C. Seneviratne for Plaintiff-  
Appellant.

C. Ranganathan with M. Ambalavannar for Defendant-  
Respondent.

10 *Argued on :* April 28, 1959.

*Decided on :* May 29, 1959.

BASNAYAKE, C. J.

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The plaintiff, the Bank of Ceylon, instituted this action against the defendant for the recovery of a sum of Rs. 13,461/77 together with interest on a sum of Rs. 12,861/56 at the rate of 6 per cent per annum from 8th October 1953, the date of action, till the date of decree, and thereafter on the aggregate amount of the decree at the legal rate of interest till payment in full. The allegation in the plaint is that by deed No. 3427 dated 20th February 1952 and attested by V. Navaratnarajah, Notary Public, filed therewith and pleaded as part and parcel of it, the defendant bound himself, his heirs, executors and administrators, to pay to the plaintiff Bank at Jaffna the sum of Rs. 14,729/61 referred to as Rs. 14,792/61 in the answer of the defendant and in all subsequent proceedings) together with interest thereon at the rate of six per cent per annum to be computed from the date of the deed.

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It is further alleged that for securing to the plaintiff Bank the payment of all sums payable under that deed referred to in the proceedings as P1 the defendant specially mortgaged and hypothecated to the Bank as primary mortgage free of encumbrances the lands described in the schedule thereto.

The plaintiff states that there is a balance of Rs. 12,861/56 due as principal from the defendant after giving him credit in a sum of Rs. 1,868/05 and a sum of Rs. 600/21 as interest, which the defendant has failed and neglected to pay.



The defendant denies that a sum of Rs. 12,861/56 is due as principal and Rs. 600/21 as interest. He states that by deed No. 208 of 27th February, 1951 produced at the trial and marked D7 he agreed to pay to the plaintiff Bank Rs. 20,000/- and as security for the due payment of that sum he mortgaged and hypothecated with the Bank the stock-in-trade lying at No. 108, Hospital Road, and the Chevrolet lorry No. CL. 5172, and that on 20th February 1952 by deed No. 3427 attested by V. Navaratnarajah, Notary Public, he created a hypothecary charge over the lands described in the schedule thereto as further and additional security for the payment of Rs. 14,792/61. He maintains that no claim for the payment of any sum of money can be made on deed No. 3427. He further alleges that lorry No. CL. 5172 was seized on 29th July 1953 under writ issued in D. C. Colombo Case No. 22280/M subject to the mortgage created by deed No. 208 and that the Bank failed to take steps to realise the amount due under that deed and that lorry No. CL. 5172 was sold under the writ in the case on 7th March 1953 subject to the mortgage and purchased by one M. R. Peiris and that the plaintiff Bank through its representative wrongfully consented to the Fiscal delivering the lorry to one M. R. Peiris who had purchased it subject to the mortgage.

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The trial proceeded on issues suggested by Counsel. Learned Counsel for the plaintiff suggested the following issue :—

- (1) “ What amount is due to the plaintiff Bank on the bond obligatory referred to in paragraph 3 of the plaint ? ”

Learned Counsel for the defendant suggested the following issues :—

- (2) “ Is any money due to the plaintiff on bond No. 3427 of 20-2-1952 sued upon in this case ? ”
- (3) Did the defendant, by the said bond No. 3427 give further and additional security for the repayment of the sum of Rs. 14,792/61 with interest at six per cent per annum, which is due to the plaintiff on bond No. 208 of 27-2-51 :
- (4) If so, can any claim for the recovery of money be made on the said bond No. 3427 ?
- (5) If not, is the plaintiff’s action maintainable ?
- (6) Did the defendant by bond No. 208 of 27-2-1951 agree to pay Rs. 20,000/- and interest thereon and, as security for the pay-

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ment thereof hypothecate the stock-in-trade lying at No. 108, Hospital Road, Jaffna and lorry No. CL. 5172 ?

No. 12  
Judgment  
of the  
Supreme  
Court  
29-5-59  
-continued.

- (7) If so, can the plaintiff maintain this action without seeking to enforce the hypothecation contained in the said bond No. 208 ?
- (8) Was lorry No. CL. 5172 seized and sold in case No. 22280/M D. C. Colombo, subject to mortgage in favour of the Plaintiff Bank ?
- 10 (9) Has the plaintiff Bank failed to receive the money due from the purchaser at the said sale ?
- (10) Was the said lorry delivered to the purchaser at the said sale with the consent and approval of the plaintiff Bank ?
- (11) If any of the issues (8), (9) and (10) is answered in the affirmative, have the said bond No. 208 and the hypothecary charges created by the said bond No. 208 and by bond No. 3427 been discharged in law ?
- (12) If so, is the plaintiff's action maintainable ? ”

20 The learned District Judge has dismissed the plaintiff's action. He has come to the conclusion that the money was due not on deed No. 3427 (P1) but on deed No. 208 (D7) and that the plaintiff's action on the former deed is therefore not maintainable. In regard to the matters specifically raised in the form of issues he has held :—

- (a) that nothing is due to the plaintiff Bank on deed No. 3427 of 20th February 1952 pleaded as part and parcel of the plaint.
- 30 (b) that by deed No. 3427 the defendant gave further and additional security for the repayment of the sum of Rs. 14,792/61 with interest at six per cent per annum, which is due to the plaintiff on deed No. 208 of 27th February, 1951.
- (c) that no claim for the recovery of money can be made on deed No. 3427, and that the plaintiff's action is not maintainable.
- (d) that the defendant, by deed No. 208 of 27th February 1951, agreed to pay Rs. 20,000/- and interest thereon, and as

security for the payment thereon hypothecated the stock-in-trade lying at 108, Hospital Road, Jaffna, and lorry No. CL. 5172.

- (e) that the plaintiff can maintain this action without seeking to enforce the hypothecation contained in the deed No. 208.
- (f) that Lorry No. CL. 5172 was seized and sold in case No. 22280/M D. C. Colombo, subject to mortgage in favour of the plaintiff Bank.
- (g) that the plaintiff Bank failed to receive the money due from the purchaser at the sale. 10
- (h) that the lorry was delivered to the purchaser with the consent and approval of the Bank.
- (i) that though issues (8) (9) & (10) are answered in the affirmative deed No. 208 and the hypothecary charges created by it and by deed No. 3427 have not been discharged in law. His answer to issue No. 12 was that it does not arise.

Though his answer to issue 7 is not reconcilable with his answers to the other issues, I am of opinion that the learned District Judge is right in holding that deed No. 3427 creates no obligation to pay money but only creates a hypothec and that it is deed No. 208 that creates that obligation and that the plaintiff's present action which is an action to recover money which he alleges is due on deed No. 3427 is not maintainable. 20

Under our Civil Procedure an action has to be determined on a case disclosed in the pleadings. The code makes elaborate provision as to what the plaint should contain (s.40 et Sec) and how the defendant should answer (s.75 et Sec). In the instant case the plaintiff averred in his plaint that he was suing upon the document filed with the plaint and marked "A", namely, deed No. 3427 of 20th February 1952, and in accordance with section 50 of the Civil Procedure Code he produced the document in Court when the plaint was presented and delivered the document to be filed with it. 30

The Court is therefore called upon to decide whether deed No. 3427 creates an obligation to pay money and whether on the terms of that deed the plaintiff Bank is entitled to the decree it seeks. In this connection it will not be out of place to repeat the observations of Lord Westbury in *Eshenchunder Singh v. Shama-chura Bhutto* and others (11 Moore's Indian Appeals 20) especially as Indian Civil Procedure like ours is governed by a Code which requires precise pleadings before a trial. 40

“ This case is one of considerable importance, and their Lordships desire to take advantage of it, for the purpose of pointing out the absolute necessity that the determinations in a cause should be founded upon a case either to be found in the pleadings or involved in or consistent with the case thereby made ”. In disposing of the appeal he went on to observe “ They desire to have the rule observed, that the state of facts, and the equities and ground of relief originally alleged and pleaded by the plaintiff, shall not be departed from ; ”.

No. 12  
Judgment  
of the  
Supreme  
Court  
29-5-59  
—continued.

10 The material parts of deed No. 3427 are as follows :—

20 “ Whereas under and by virtue of a certain bond or obligation No. 208 dated 27th February 1951 the obligor became held and firmly bound unto the Bank of Ceylon.....in the sum of Rs. 20,000/- of lawful money of Ceylon with the conditions thereunder written that the said bond or obligation would be null and void if the said obligor should well and truly pay or cause to be paid to the Bank the said sum of Rs. 20,000/- together with interest thereon as set out in the said bond and as security for the due payment thereof the said obligor mortgaged and hypothecated to and with the Bank the stock-in-trade lying at No. 108, Hospital Road, Jaffna, and Chevrolet Lorry No. 5172 and as collateral security for such payment the obligor did deposit with the Bank the title deeds of the lands more particularly described in the schedule hereto and also under deed No. 3232 dated 4th August 1951 and attested by V. Navaratnarajah, Notary Public, the obligor entered into an agreement with the Bank that he shall and will upon being called upon by the Bank so to do at his cost and expense duly execute or cause to be executed in favour of the Bank in accordance with the laws and usages of the said land (sic) and in the form prepared and settled by the Bank’s lawyers

30 a good and valid primary mortgage free from all encumbrances whatsoever over the property and premises in the schedule hereto fully described for the purpose of securing to the Bank as and by way of further and additional security for the repayment of the amount which shall at the date of execution of the said primary mortgage bond be found to be due and owing and payable to the Bank by the obligor together with interest thereon at the rate of six per centum per annum.

40 And whereas there is still owing and payable by the obligor to the Bank the sum of Rs. 14,792/61 (Rupees Fourteen thousand seven hundred and ninety-two and cents sixty-one) with interest thereon at six per cent per annum from this date till payment in full.

And whereas the Bank has called upon the obligor to execute a good and valid primary mortgage free from encumbrances whatsoever over the property and premises in the schedule hereto fully described for the purpose of securing to the Bank as and by way of further and additional security for the repayment to the Bank of the said sum of Rs. 14,792/61 together with interest thereon at the rate of six per cent per annum.

“ Now Know Ye And These Presents Witness that the obligor doth by way of further and additional security for the due payment of the said sum of Rs. 14,792/61 and interest thereon at six per cent per annum from this date till payment in full hereby specially mortgage and hypothecate to and with said Bank the lands more fully described in the schedule hereto.....and it is hereby expressly agreed and declared that nothing therein contained shall in any wise affect the several terms and conditions of the said bond or obligation No. 208 of 27 February 1951 or the rights and remedies of the Bank thereunder but these presents shall be deemed and taken to be a further security for all moneys due and payable under and by virtue or in respect of the said bond or obligation.”

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It would appear from the above extracts that the obligation to pay Rs. 20,000/- or any lower sum to the Bank is an obligation created by deed No. 208, the material provisions of which reads as follows :—

“ Whereas the Bank has lent and advanced to the obligor the sum of Rupees Twenty Thousand only Rs. 20,000/- of lawful money of Ceylon (the receipt whereof the obligor doth hereby expressly admit and acknowledge) which said sum it has been agreed should be secured by these presents and the mortgage and the hypothecation hereby given and granted and be repaid with interest thereon at the rate of five per centum per annum such interest to be calculated from the date and to be paid in manner hereinafter mentioned.

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Now the condition of the above written bond or obligation is such that if the obligor shall and will well and truly repay or cause to be repaid unto the Bank in Jaffna aforesaid on demand the said sum of Rupees Twenty Thousand only Rs. 20,000/- of lawful money aforesaid and shall and will in the meantime and until such repayment pay in Jaffna aforesaid interest on the said sum of Rupees Twenty Thousand only Rs. 20,000/- at the rate of six per centum per annum such interest to be calculated from the date hereof and payable monthly on the last day of each and every month the first of such payments of interest to be made on the Twenty-eighth day of February one thousand nine hundred and fifty-one and shall and will during the continuance of the mortgage and hypothecation affected by these presents observe and perform all and singular the covenants and conditions in these presents contained and on the part of the obligor to be done observed and performed then the above written bond or obligation shall be null and void but otherwise shall be and remain in full force and virtue."

No. 12  
Judgment  
of the  
Supreme  
Court  
29-5-59  
—continued.

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Deed No. 208 provides that he shall pay on demand at Jaffna the sum of Rs. 20,000/- or any part thereof which may be due. There is no proof that there was any demand made by the Bank, although the plaint contains the usual averment that the "defendant failed and neglected to pay though thereto often demanded."

30

The right to sue under deed No. 208 arises in default of payment upon a demand made in terms of that Deed. Deed No. 3427 does not purport to create an additional obligation to pay money. It is designed to secure the money due on deed No. 208 by obtaining additional security and preserves the rights and remedies under deed No. 208. But in the instant case the action is not on the latter deed. The plaintiff cannot by suing on deed No. 3427 obtain a decree in respect of the obligation created by deed No. 208. To obtain a decree in respect of that obligation he must sue on that deed.

The appeal is dismissed with costs.

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

SANSONI, J.

I agree.

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

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## No. 13.

## Decree of the Supreme Court.

S. C. 693/'56(F).

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.

The Bank of Ceylon, Jaffna.

*Plaintiff.*

*Vs.*

K. Arumugam Chelliahpillai of Karainagar presently of  
Hospital Street, Jaffna. 10

*Defendant.*

The Bank of Ceylon, Jaffna.

*Plaintiff-Appellant.*

*Against.*

K. Arumugam Chelliahpillai of Karainagar presently of  
Hospital Street, Jaffna.

*Defendant-Respondent.*

Action No. 10403.

## DISTRICT COURT OF JAFFNA. 20

This cause coming on for hearing and determination on the  
28th April and 29th May, 1959 and on this day, upon an appeal  
preferred by the plaintiff-appellant before the Honourable H. H.  
Basnayake, q.c., Chief Justice and the Honourable M. C. Sansoni,  
Puisne Justice of this Court, in the presence of Counsel for the  
plaintiff-appellant and defendant-respondent.

It is considered and adjudged that this appeal be and the  
same is hereby dismissed.

And it is further decreed that the plaintiff-appellant do pay  
to the defendant-respondent the taxed costs of this appeal. 30

(Vide copy of judgment attached).

Witness the Honourable Hema Henry Basnayake, q.c., Chief  
Justice at Colombo, the 5th day of June, in the year One thousand  
nine hundred and fifty nine, and of Our Reign the Eighth.

(Sgd.) B. F. PERERA,  
*Deputy Registrar, S. C.*

No. 14.

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

No. 14  
Application  
for  
Conditional  
Leave to  
Appeal to  
the Privy  
Council  
26-6-59

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

In the matter of an application for leave to appeal to Her Majesty the Queen in Council under the "Appeals" (Privy Council) Ordinance (Cap. 85).

D. C. Jaffna No. 10403.

S. C. Final No. 693 of 1956.

10           The Bank of Ceylon, Jaffna.

*Plaintiff-Appellant.*

APPELLANT.

*Vs.*

K. Arumugam Chelliahpillai of Karainagar presently of Hospital Road, Jaffna

*Defendant-Respondent.*

RESPONDENT.

To

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

On this 26th day of June, 1959.

The petition of the Bank of Ceylon, the Appellant above-named appearing by John Wilson and his assistants Sydney Rienzie Dharmaratna and Cecil Emmanuel Swampillai its Proctors shewth as follows :—

1. That feeling aggrieved by the judgment and decree of this Honourable Court pronounced on the 29th day of May, 1959, the Appellant is desirous of appealing therefrom to Her Majesty the Queen in Council.

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No. 14  
Application  
for  
Conditional  
Leave to  
Appeal to  
the Privy  
Council  
26-9-59  
—continued.

2. The said judgment is a final judgment and the matter in dispute on the appeal exceeds the value of Rs. 5,000/- and is also one that involves directly or indirectly a claim or question to or respecting property or a civil right amounting to or of the value of Rs. 13,461/77.

3. Due notice of intention to apply to this Honourable Court for conditional leave to appeal to Her Majesty in Council has been given to the Respondent and his Proctor by the Appellant and its Proctor as is more fully set out in the Affidavit hereto annexed marked " X ".

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WHEREFORE the Appellant prays on the grounds aforesaid, for conditional leave to appeal against the said judgment of this Court dated 29th May, 1959, to Her Majesty the Queen in Council.

(Sgd.) JOHN WILSON,  
*Proctor for Appellant.*

Settled by :

MR. C. G. WEERAMANTRY, and  
MR. H. W. JAYAWARDENE, Q.C.,  
*Advocates.*

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(Sgd.) JOHN WILSON,  
*Proctor for Appellant.*

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

No. 15  
Decree  
of the  
Supreme  
Court  
Granting  
Conditional  
Leave to  
Appeal to  
the Privy  
Council  
24-7-59

S. C. Application No. 320.

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 26th June, 1959, for  
Conditional Leave to Appeal to Her Majesty the Queen in  
Council by the Plaintiff-Appellant against the decree dated  
29th May, 1959.

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The Bank of Ceylon, Jaffna.

Plaintiff-Appellant.

PETITIONER.

*Against*

K. Arumugam Chelliahpillai of Karainagar, presently of  
Hospital Road, Jaffna.

Defendant-Respondent.

RESPONDENT.

20

Action No. 10403 (S. C. 693/56—Final).

District Court of Jaffna.

This cause coming on for hearing and determination on the  
24th day of July, 1959 before the Hon. K. D. de Silva, and the  
Hon. H. N. G. Fernando, Puisne Justices of this Court, in the  
presence of Counsel for the Petitioner and no appearance for the  
Respondent.

No. 15  
Decree  
of the  
Supreme  
Court  
Granting  
Conditional  
Leave to  
Appeal to  
the Privy  
Council  
24-7-59  
—continued.

It is considered and adjudged that this application be and the same is hereby allowed upon the condition that the applicant do within one month from this date :—

1. Deposit with the Registrar of the Supreme Court a sum of Rs. 3,000/- and hypothecate the same by bond or such other security as the Court in terms of Section 7 (1) of the Appellate Procedure (Privy Council) Order, 1921, 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, 1921, with the Registrar of sum of Rs. 300/- in respect of fees mentioned in Section 4 (b) and (c) of the Appeals (Privy Council) Ordinance (Chapter 85). 10

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 3rd day of August, in the year One thousand Nine hundred and fifty-nine and of Our Reign the Eighth.

(Sgd.) B. F. PERERA, 20

*Deputy Registrar, S. C.*

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No. 16.

Application for Final Leave to Appeal to the  
Privy Council.

No. 16  
Application  
for Final  
Leave to  
Appeal to  
the Privy  
Council  
5-8-59

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

In the matter of an application for Final Leave to Appeal to  
Her Majesty the Queen in Council.

D. C. Jaffna No. 10403.

S. C. Final No. 693 of 1956.

The Bank of Ceylon, Jaffna.

*Plaintiff.*

*Vs.*

K. Arumugam Chelliahpillai of Karainagar, presently of  
Hospital Road, Jaffna.

*Defendant.*

The Bank of Ceylon, Jaffna.

*Plaintiff-Appellant.*

PETITIONER.

*Vs.*

K. Arumugam Chelliahpillai of Karainagar, presently of  
Hospital Road, Jaffna.

*Defendant-Respondent.*

RESPONDENT.

To

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

On this 5th day of August, 1959.

The petition of the Bank of Ceylon, the (Plaintiff-Appellant)  
Petitioner abovenamed appearing by JOHN WILSON and his  
assistants SYDNEY RIENZIE DHARMARATNA and CECIL EMMANUEL  
SWAMPILLAI its Proctors states as follows :—

1. The Appellant-Petitioner, on the 24th day of July, 1959  
obtained conditional leave from this Honourable Court to appeal

No. 16  
Application  
for Final  
Leave to  
Appeal to  
the Privy  
Council  
5-8-59  
—continued.

to Her Majesty the Queen in Council against the judgment of this Court pronounced on the 29th day of May, 1959.

2. The Appellant-Petitioner has, in compliance with the conditions on which leave was granted, given security by deposit of Rs. 3,000/- with the Registrar of this Court and the hypothecation thereof by bond on the 4th day of August, 1959 and has also deposited the sum of Rs. 300/- as fees payable to the Registrar of this Honourable Court and complied with all the conditions imposed by this Honourable Court by its order dated 24th July, 1959.

10

Wherefore the petitioner prays :—

- (a) that it be granted final leave to appeal against the said judgment of this Court dated the 29th day of May, 1959 to Her Majesty the Queen in Council ;
- (b) for costs ; and
- (c) for such other and further relief as to this Court shall seem meet.

(Sgd.) JOHN WILSON,

*Proctor for Plaintiff-Appellant.*

*Petitioner.* 20

(Sgd.) JOHN WILSON,

*Proctor for Plaintiff-Appellant.*

*Petitioner.*

No. 17.

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

S. C. Application No. 401.

No. 17  
Decree of the  
the Supreme  
Court grant-  
ing Final  
Leave to  
Appeal to  
the Privy  
Council  
4-9-59

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

10 In the matter of an application dated 5th August, 1959, for  
Final Leave to Appeal to Her Majesty the Queen in Council  
by the Plaintiff-Appellant against the decree dated 29th  
May, 1959.

The Bank of Ceylon, Jaffna.

*Plaintiff-Appellant.*

PETITIONER.

*Against*K. Arumugam Chelliahpillai of Karainagar, presently of  
Hospital Road, Jaffna.*Defendant-Respondent.*

RESPONDENT.

20 Action No. 10403 (S. C. 693/'56—Final).

District Court of Jaffna.

This cause coming on for hearing and determination on the  
4th day of September, 1959 before the Hon. H. W. R. Weera-  
sooriya and the Hon. H. N. G. Fernando, Puisne Justices of this  
Court, in the presence of Counsel for the Petitioner.

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

30 Witness the Hon. Hema Henry Basnayake, q.c., Chief Justice  
at Colombo, the 11th day of September, in the year One thousand  
Nine hundred and fifty-nine and of Our Reign the Eighth.

(Sgd.) B. F. PERERA,  
*Deputy Registrar, S. C.*

**Certificate of Registration.**

Mortgaged to Bank of Ceylon, Jaffna (.....208)

(Sgd.) P. SANGARAPILLAI,  
for C. M. T.  
4-4-51

Deleted.....

(Sgd.) S. E. C. SOYSA, (Intd.) .....  
for C. M. T.  
5-7-49

10

Amended L. A. as from 1-9-51 (Intd.) .....

(Sgd.) K. C. SELVADURAI,  
R. M. V.  
10-11-51

C. M. T. 3

(Section 16)

**CERTIFICATE OF REGISTRATION.**

(To be preserved by the owner).

- I. Distinctive number : CL. 5172.
- II. Date of first registration : 6-4-49. 20
- III. Full name and address of present owner : Kanther  
Arumugam Chelliahpillai, No. 108, Grand Bazaar,  
Jaffna (Hospital Road).
- IV. Date of transfer to present owner : —
- V. (a) Manufacturer's name : Chevrolet Lorry.  
(b) Model, name or number : Loadmaster.  
(c) Horse power : 30.4 (d) Fuel used : Petrol.  
(e) Wheels on rear axle : Dual (f) Tyres : Pneumatic.
- VI. Type and colour of body : Closed, Varnish and Light Blue.
- VII. Manufacturer's No, of chassis : XTRKFFCB, 4402062, 30

VIII. Manufacturer's No. of engine : FCR. 292414.

IX. Tare : 43 Cwts. 2 qr. 14 lbs.

X. Purpose for which motor car will be used : Motor Lorry.

XI. (a) Place at which motor car will usually be kept : Jaffna  
Town.

(b) The licensing authority for that place : G. A. N. P.

XII. Transferor's name and address :

XIII. Previous licensing authority :

XIV. Name of claimants, if any :

10 I certify that the above is a true copy of the registered particulars of motor car No. CL. 5172.

(Sgd.) K. C. SELVADURAI,  
*for Commissioner of Motor Transport.*

Date : 8-4-1959.

1. The registered owner shall immediately notify to the Commissioner of Motor Transport.

(1) Change of address,

(2) Change of place where motor car is usually kept,

(3) Change of possession,

20 (4) Change of affecting colour, tare or other particulars appearing above.

(5) Conversion of hiring car to private car, or vice versa, or of lorry into omnibus, &c., and forward this certificate to him.

2. On change of possession the registered owner shall deliver this certificate to the purchaser who shall forward it to the Commissioner with the application for registration in his name.

The motor car licence shall be forwarded to the Commissioner direct by the registered owner.



D 7  
 Bond  
 No. 208  
 in favour of  
 the Bank of  
 Ceylon  
 27-2-51

D 7.

**Bond No. 208 in favour of the Bank of Ceylon.**

No. 208.

Know all Men by these Present that Kanthar Arumugampillai Chelliahpillai of 108 Hospital Road, Jaffna in the Island of Ceylon (hereinafter called "the obligor" which term or expression as herein used shall where the context so requires or admits mean and include the said Kanthar Arumugampillai Chelliahpillai his heirs executors and administrators) is held and bound firmly unto the Bank of Ceylon established by the Bank of Ceylon Ordinance No. 53 of 1938 and having its Head Office at Colombo in Ceylon (hereinafter referred to as "the Bank" which expression as herein used shall where the context so requires or admits mean and include the said Bank of Ceylon and its assigns) in the penal sum of Rupees Forty Thousand only (Rs. 40,000/-) of lawful money of Ceylon to be paid to the Bank for which payment well and truly to be made the obligor doth hereby bind himself and his heirs executors and administrators firmly by these presents. And for further securing to the Bank the payment of all sums of money due owing and payable to the Bank under by virtue or in respect of these presents. 10 20

FIRST the obligor doth hereby specially mortgage and hypothecate to and with the Bank (as a primary mortgage free from encumbrance) all and singular the property described in the schedule hereto and all the estate right title interest property claim and demand whatsoever of the obligor in to out of or upon the same ; and

SECONDLY the obligor doth hereby cede assign set over and assure unto the Bank by way of primary mortgage (free from encumbrance) all and every contracts and contract of insurance already effected or which may hereafter from time to time be effected in respect of the said property described in the said schedule hereto and all sums of money which may be recoverable or receivable thereunder and all the estate right title interest property claim and demand whatsoever of the obligor in to out of or upon the same. 30

AND the obligor doth hereby covenant and agree with the Bank as follows :—

- (i) that the obligor has good right and full power to mortgage hypothecate and assign the mortgaged premises in manner aforesaid and that the same are not subject to any other 40

lien seizure charge or encumbrance and that the obligor shall and will at the request of the Bank but at the cost and expense of the obligor do and execute or cause to be done and executed all such further and other acts deeds assurances and things for the more perfectly and effectually assuring to the Bank by way of primary mortgage and hypothecation and mortgaged premises or any part or portion thereof respectively as by the Bank shall or may be reasonably required; that the obligor shall and will during the continuance of the mortgage and hypothecation effected by these presents keep and maintain the mortgaged premises and every part or portion thereof respectively in proper order repair and condition and shall and will suffer and permit the Bank or its manager for the time being at Jaffna or any person duly authorised by such manager from time to time to visit inspect check and verify at the cost of the obligor the mortgaged premises or any of them at all hours in the daytime during the continuance of the mortgage and hypothecation effected by these presents.

D 7  
Bond  
No. 208  
in favour of  
the Bank of  
Ceylon  
27-2-51  
—continued.

10

- (ii)

20

- (iii) that the obligor shall and will regularly and punctually pay all charges rents premia duties outgoings and expenses whatsoever in respect of the mortgaged premises and also in respect of the premises referred to in the said schedule hereto and procure official receipts therefor respectively and shall and will whenever required to do so procure unto the Bank the said official receipts or any other documents relative to any such aforesaid.

30

- (iv) that the obligor shall and will at all times during the continuance of the mortgage effected by these presents insure and keep insured in the joint names of the obligor as owner and the Bank as mortgagee against loss or damage by fire and lightning all the property described in the said schedule hereto to the full insurable value thereof in some insurance office or offices of good standing to be approved of by the Bank and shall and will regularly and punctually pay all and every the premia and premiums or sums of money for the time being necessary for keeping on foot the said policy or policies and will whenever required to do so deliver the receipts for the same to the Bank.

40

- (v) that in case the property described in the said schedule hereto or any part thereof shall at any time during the mortgage and hypothecation effected by these presents be destroyed or damaged by fire or lightning then and in any such case and as often as the same shall happen all such sums of money as shall be received or be recoverable by virtue of any

D 7  
 Bond  
 No. 208  
 in favour of  
 the Bank of  
 Ceylon  
 27-2-51  
 —continued.

- such insurance or insurances shall and will be paid by the obligor to the Bank in or towards the discharge or part discharge of the moneys payable to the Bank under these presents; or in case of damage by accident only such sums or sum of money shall, at the option of the Bank be expended in reinstating or repairing the said motor vehicles or any of them.
- (vi) that the obligor shall and will not suffer the mortgaged premises or any part or portion thereof to be seized or taken in execution of any judgment or judgments against the obligor or under or in respect of any other claim or claims or proceedings. 10
- (vii) that the obligor shall and will from time to time duly and punctually pay the amount payable by the obligor to the Income Tax Department of Ceylon by way of Income Tax and when required so to do will forthwith deliver to the Bank for inspection the notices of assessment issued by the said Department and the receipts or receipt of the said Department for the payments or payment so made.
- (viii) that the obligor shall not and will not sell and dispose of the mortgaged premises or any part thereof without the prior written consent of the Bank and shall and will if and when a sale of the mortgaged premises or any part thereof is effected with the prior written consent and approval of the Bank pay the net proceeds sale thereof to the Bank to be applied in reduction of all moneys due under these presents. 20
- (ix) that the obligor shall and will duly comply with all the provisions of the Motor Car Ordinance No. 45 of 1938 or any subsisting or future statutory modification thereof or the law for the time being in force relating to motor vehicles and shall not and will not do anything that will affect the right of the said motor vehicle or any of them to be used on the approved route or routes mentioned in the relative licence or licences. 30

(Sgd.) K. A. CHELLIAH PILLAI

Signed and dated at Jaffna in the Island of Ceylon this 27th day of February One Thousand Nine Hundred and Fifty one.

WHEREAS the Bank has lent and advanced to the obligor the sum of Rupees Twenty Thousand only (Rs. 20,000/-) of lawful money of Ceylon (the receipt whereof the obligor doth hereby expressly admit and acknowledge) which said sum it has been agreed should be secured by these presents and the mortgage and hypothecation hereby given and granted and be repaid with interest thereon at the rate of five per centum per annum such interest to be calculated from the date and to be paid in manner hereinafter mentioned. 40

NOW the condition of the above-written bond or obligation is such that if the obligor shall and will well and truly repay or cause to be repaid unto the Bank in Jaffna aforesaid on demand the said sum of Rupees Twenty Thousand only of lawful money aforesaid and shall and will in the meantime and until such repayment pay in Jaffna aforesaid interest on the said sum of Rupees Twenty Thousand only (Rs. 20,000/-) at the rate of six per centum per annum such interest to be calculated from the date hereof and payable monthly on the last day of each and every month the first of such payments of interest to be made on the Twenty eighth day of February One Thousand Nine Hundred and Fifty one and shall and will during the continuance of the mortgage and hypothecation effected by these presents observe and perform all and singular the covenants and conditions in these presents contained and on the part of the obligor to be done observed and performed then the abovementioned bond or obligation shall be null and void but otherwise shall be and remain in full force and virtue.

D 7  
Bond  
No. 208  
in favour of  
the Bank of  
Ceylon  
27-2-51  
—continued.

10

20

(a) AND it is hereby expressly agreed and declared as follows:—  
if the obligor shall fail or neglect to pay the cost of such visiting and inspection as aforesaid or shall fail or neglect duly to pay the charges rents premia duties outgoings and expenses as aforesaid or to deliver to the Bank the official receipts therefor as hereinbefore provided or if the obligor shall fail or neglect to keep the mortgaged premises insured as aforesaid or to endorse or to deliver to the Bank the policy or policies of insurance or the receipts for premia or to pay the Bank the cost of examining the books of the said business or of making copies thereof or extracts therefrom as aforesaid to pay the income tax as aforesaid then and in any such case it shall be lawful for but not obligatory on the Bank to pay the cost of such visiting and inspection and all charges rents premia duties outgoings and expenses and all costs payment and expenses for effecting or keeping on foot such insurances and the cost of examining the books and of making copies thereof or extracts therefrom and all income tax and the same together with interest thereon at the rate of five per centum per annum shall on demand be payable to the Bank by and be recoverable from the obligor in Jaffna aforesaid and shall be charged specially upon the mortgaged premises and shall be covered by the mortgage and hypothecation hereby given and granted or expressed or intended so to be ;

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(b) the acceptance by the Bank of the security created and effected by these presents shall in no way or manner prejudice or effect any lien to which the Bank is by law entitled or any other securities which the Bank already holds or may at any

D 7  
 Bond  
 No. 208  
 in favour of  
 the Bank of  
 Ceylon  
 27-2-51  
 —continued.

time and from time to time hereafter hold from or on account of the obligor ;

- (c) if the obligor shall commit a breach of any of the covenants hereinbefore contained and on the part of the obligor to be observed and performed or if the obligor shall at any time during the continuance of the mortgage effected by these presents be declared or adjudged insolvent or bankrupt or enter into a composition with his creditors then and in any such case it shall be lawful for the Bank or its manager for the time being at Jaffna aforesaid or any person authorised by such manager to enter upon and take possession of the mortgaged premises or any of them or any part thereof with full power to sell the same or any other part thereof and to take and apply the sale proceeds thereof until the whole of the moneys due under or secured by these presents including all costs and expenses of such possession or sale or in any way incidental thereto and the cost of all upkeep of and repairs to the mortgaged premises (all of which costs and expenses shall be charged specially upon the mortgaged premises and shall be covered by the mortgage and hypothecation hereby granted or expressed or intended so to be) have been fully paid and liquidated or at once to sue the obligor for and recover payment from the obligor of all moneys due under these presents or if the Bank shall think fit so to do also at any time to adopt both the above remedies simultaneously or successively for recovering payment of the said moneys and in the event of the Bank suing for the recovery of the moneys aforesaid the obligor hereby expressly agrees that the Bank shall be entitled to have a receiver appointed in respect of the mortgaged premises pending such action who in addition to the powers conferred by law or by a competent Court shall be vested with all the rights and powers hereby given to the Bank without prejudice however to the right hereby given to the Bank to enter upon and take possession of the mortgaged premises with all the rights and powers hereinbefore given ;
- (d) the security hereby created shall continue to be valid binding and effectual for all purposes notwithstanding any change by amalgamation consolidation or otherwise which may be made in the constitution of the corporation by which the business of the Bank may for the time being be carried on and shall be available for and may be enforced by the corporation for the time being carrying on the business now carried on by the Bank ; and
- (e) every notice or demand made under these presents and every summons or notice of any kind whatsoever in con-

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nection with any action suit or other proceedings taken under these presents shall be taken and be deemed to have been duly served upon the obligor if the same be sent by post under registered cover addressed to the obligor to the last know place of abode or business for the time being of the obligor in Jaffna aforesaid.

D 7  
Bond  
No. 208  
in favour of  
the Bank of  
Ceylon  
27-2-51  
—continued.

**The Schedule above referred to :—**

All and singular the stock-in-trade merchandise effects and things particularly the goods named as follows :—

10                    Sundrygoods, oilmanstores, furniture and fittings  
                      valued at                    ...                    ...                    Rs. 18,000/-

(Sgd.) K. A. CHELLIAH PILLAI.

20                    and all other movable property of every sort and description whatsoever in and upon the premises bearing assessment No. 108 Hospital Road, in Jaffna aforesaid and in and upon any other godowns stores and premises at which the obligor now is and may at any time and from time to time hereafter be carrying on business or in or upon which the said stock-in-trade merchandise effects things and movable property may from time to time be stored and also all and singular the stock-in-trade merchandise effects things and other moveable property of every sort of description whatsoever which shall or may from time to time and at all time hereafter during the continuance of these presents be brought into or lie in and upon the aforesaid premises and all or any other places of business into which the obligor may at any time and from time to time hereafter remove and carry on his business or trade or store the said stock-in-trade merchandise effects things and other movable property.

(Sgd.) K. A. CHELLIAH PILLAI.

30                    WITNESSES to signature of the said  
                      Kanthar Arumugampillai Chelliahpillai, } 1. (Sgd.) Illegibly  
                      who do hereby declare that they are }  
                      well acquainted with the executant }  
                      and know his proper name occupation } 2. (Sgd.) Illegibly  
                      and residence.                                }

**Schedule.**

And all motor vehicles registered in the name of the obligor and the particulars of which are as follows :—

Registered Number	Make	Chassis Number	Engine Number	Type of Vehicle	Route for which it is licensed
CL. 5172	Chevrolet	XTRKFFCB 4402062	FCR 292414	Lorry	

The above Vehicle is garaged at Hospital Road, Jaffna.

(Sgd.) K. A. CHELLIAH PILLAI.

10

Received from THE BANK OF CEYLON the sum of Rupees Twenty thousand only. (Rs. 20,000/-). The repayment whereof is secured by the Mortgage Bond No. 208 Dated the 27th day of February One thousand Nine hundred and Fifty one.

(Sgd.) K. A. CHELLIAHPILLAI.

**KANTHAR ARUMUGAMPILLAI CHELLIAHPILLAI**

TO

**BANK OF CEYLON.**

**Primary Mortgage Over.**

Stock-in-trade consisting of sundry goods, oilmanstores, 20 furniture and fittings valued at Rs. 18,000/- and mortgage over Chevrolet Lorry No. CL. 5172 valued at Rs. 9,000/-.

P 1.

**Mortgage Bond No. 3427.**

P 1.

Prior Registration

Jaffna C. 268/287 &amp; 266/241.

P 1  
Mortgage  
Bond  
No. 3427  
Attested by  
V. Navar-  
atnarajah  
Notary  
Public  
20-2-52

Mortgage

Lands : Two

No. 3427.

Rs. 14,792/61.

10

TO ALL TO WHOM THESE PRESENTS SHALL COME  
K. Arumugam Chelliahpillai of Karanagar presently of Hospital  
Street, Jaffna (hereinafter sometimes called and referred to as the  
obligor which term herein used shall where the context so requires  
or admits mean and include the said K. Arumugam Chelliahpillai  
and his heirs, executors and administrators).

**SENDS GREETING :**

20

WHEREAS under and by virtue of a certain Bond or  
obligation No. 208 dated 27th February 1951 the obligor became  
held and firmly bound unto the Bank of Ceylon a corporation  
established by the Bank of Ceylon Ordinance No. 53 of 1938 and  
having its Head Office at Bristol Street, Fort, Colombo in the  
Island of Ceylon (hereinafter sometimes called "THE BANK"  
which term or expression as herein used shall where the context  
so requires or admits mean and include the said Bank of Ceylon  
and its assigns) in the sum of Rs. 20,000/- of lawful money of  
Ceylon with the conditions thereunder written that the said bond  
or obligation would be null and void if the said obligor should  
well and truly pay or cause to be paid to the Bank the said sum  
of Rs. 20,000/- together with interest thereon as set out in the  
said Bond and as security for the due payment thereof the said  
obligor mortgaged and hypothecated to and with the Bank the  
stock-in-trade lying at No. 108 Hospital Road, Jaffna and  
Chevrolet Lorry No. 5172 and as collateral security for such  
payment the obligor did deposit with the Bank the title deeds of  
the lands more particularly described in the schedule hereto and  
also under deed No. 3232 dated 4th August 1951 and attested by  
V. Navaratnarajah Notary Public the obligor entered into an  
agreement with the Bank that he shall and will upon being  
called upon by the Bank so to do at his cost and expense duly  
execute or cause to be executed in favour of the Bank in accor-  
dance with the laws and usages of the said land and in the form

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P 1  
Mortgage  
Bond  
No. 3427  
Attested by  
V. Nava-  
ratnarajah  
Notary  
Public  
20-2-52  
—continued.

prepared and settled by the Bank's lawyers a good and valid primary mortgage free from all encumbrances whatsoever over the property and premises in the schedule hereto fully described for the purpose of securing to the Bank as and by way of further and additional security for the repayment of the amount which shall at the date of execution of said primary mortgage bond shall be found to be due owing and payable to the Bank by the obligor together with interest thereon at the rate of six per cent per annum.

AND WHEREAS there is still owing and payable by the obligor to the Bank the sum of Rs. 14,792/61 (Rupees Fourteen thousand seven hundred and ninety two and cents sixty one) with interest thereon at six per cent per annum from this date till payment in full. 10

AND WHEREAS the Bank has called upon the obligor to execute a good and valid primary mortgage free from encumbrances whatsoever over the property and premises in the schedule hereto fully described for the purpose of securing to the Bank as and by way of further and additional security for the repayment to the Bank of the said sum of Rs. 14,792/61 together with interest thereon at the rate of six per cent per annum. 20

NOW THEREFORE KNOW YE AND THESE PRESENTS WITNESS that the obligor doth by way of further and additional security for the due payment of the said sum of Rs. 14,792/61 and interest thereon at six per cent per annum from this date till payment in full hereby specially mortgage and hypothecate to and with the said Bank the lands more fully described in the schedule hereto and all the estate, right, title, interest, property, claim and demand whatsoever of the said obligor of in to upon and out of the same. 30

AND the obligor doth hereby covenant with the Bank that the obligor has good power and right to mortgage and hypothecate the said lands and premises in manner aforesaid and also that the same are not subject to any prior charge, encumbrance Fiscal's seizure, or claim and further that the obligor and all persons having or claiming any right, title, interest, claim and demand whatsoever in to upon or out of the same will at all times during the continuance of the mortgage hereby created at their own cost and expense do and execute or cause to be done and executed all such further and other acts, deeds, assurances, matter and things whatsoever as shall or may be reasonably required by the said Bank for the more perfectly and effectually assuring the same unto the said Bank, provided however and it is hereby expressly agreed and declared that nothing herein con- 40

tained shall in anywise affect the several terms and conditions of the said bond or obligation No. 208 of 27th February 1951 or the rights and remedies of the Bank thereunder but these presents shall be deemed and taken to be a further security for all moneys due and payable under and by virtue or in respect of the said bond or obligation.

P 1  
Mortgage  
Bond  
No. 8427  
Attested by  
V. Nava-  
ratnarajah  
Notary  
Public  
20-2-52  
—continued.

### Schedule of Property.

10 1. All that piece of land situated at THANGODAI in the parish of Kartive, in the Islands Division, Jaffna District, Northern Province, called KURUNGHITHALVU in extent 28 Lms. V. C. (twenty eight lachchams varagu culture) with house, well and other cultivated and spontaneous plantations and bounded on the EAST by the property of Karthigesu Ramalingam and Sinnammah widow of Subramaniam, NORTH by the properties of Nagamuttu Arumugam and Valliammai widow of Kandiah, WEST by the properties of Kandiah Sockalingam and shareholders and SOUTH by the properties of the heirs of the late Valliammai wife of Ponniah and by the property of Visuvanathar Kumaravelu.

20 2. All that land situated at THANGODAI aforesaid called MAHIAVALAI in extent 25, 1/2 Lms. P. C. (twenty five and a half lachchams paddy culture) and bounded on the EAST by the property of Arunasalam Velupillai, NORTH by Road, WEST by lane and the property of Ramanathar Kandiah and South by the property of Ramanathar Kandiah and Arunasalam Velupillai.

30 The above lands are held and possessed by the said obligor under and by virtue of Transfer deed No. 10375 dated 30th April 1946 and attested by A. Kanagasabai Notary Public and Transfer deed No. 682 dated 25th March 1939 and attested by P. Sabaratnam Notary Public.

IN WITNESS WHEREOF the said K. Arumugam Chelliahpillai has hereunto and to two others of the same tenor and date as these presents set his hand at Vannarponnai East, Jaffna on this twentieth day of February One thousand nine hundred and fifty two.

(Sgd.) K. A. CHELLAIHPILLAI.  
(in Tamil)

Signed in the presence of us :

Witnesses : -

- 40 1. (Sgd.) K. PERAMBALAM.  
2. (Sgd.) M. PARAMANATHAN.

(Sgd.) V. NAVARATNARAJAH,  
Notary Public.

P 1  
Mortgage  
Bond  
No. 3427  
Attested by  
V. Nava-  
ratnarajah  
Notary  
Public  
20-2-52  
—continued.

I Veeravagu Navaratnarajah of Jaffna, Notary Public do hereby certify and attest that the foregoing instrument having been read over and explained by me to the said obligor K. Arumugam Chelliahpillai who is known to me and who has signed in Tamil in the presence of Kanapathipillai Peramapalam of Chuthumalai and Muttiah Paramanathan of Thirnelvely the subscribing witnesses hereto who are also known to me the same was signed by the said obligor and also by the said witnesses in my presence and in the presence of one another all being present at the same time at Vannarponnai East, Jaffna on this Twentieth day of February One thousand nine hundred and fifty two.

10

I further certify and attest the consideration expressed herein was not paid in my presence but was acknowledged to have been received and that the duplicate hereof bears Two stamps to the value of Rs. 11/- and the original one to the value of Re. 1/- and that before this instrument was read over and explained as aforesaid on page 2 of the original in line 23 'by the obligor' interpolated, and in the duplicate on Page 2 in line 20 're' interpolated, on page 5 in line 6 'called' deleted, and in line 14 of page 2 'and settled' interpolated.

20

(Sgd.) V. NAVARATNARAJAH,  
*Notary Public.*

Date of attestation :

20th February 1952.

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P 3.

**Letter from the Defendant to the Agent,  
Bank of Ceylon, Jaffna.**

P 3  
Letter  
from the  
Defendant  
to the Agent  
Bank of  
Ceylon  
Jaffna  
80-1-53

Estd. 1939.

Tele { grams : " SIVAN "  
phone : No. 60

**K. A. CHELLIAH PILLAI,**

General Merchant, Commission Agent, Importer, Exporter,  
Govt. Contractor and Transporting Agent.

10

Bungalow :—  
" THANGAVASA "  
KARAINAGAR.

Bankers :—  
Mercantile Bank of India, Ltd.,  
JAFFNA & COLOMBO.

108, Hospital Road, Grand Bazaar,  
JAFFNA.  
(Ceylon)  
30-1-1953.

The Agent,  
Bank of Ceylon,  
Jaffna.

20

Dear Sir,

Lorry No. CL. 5172.

The above lorry which is registered in my name and tendered as security to your Bank for the loan obtained by me had been seized in Colombo under writ in Case No. 22280/M. D. C. Colombo. It is endorsed on the Certificate of Registration that the lorry is under mortgage to you. Therefore kindly inform W. P. of the said mortgage and the needful. I regret very much for the trouble caused to you.

30

I am, Sir,  
Yours obediently,  
(Sgd.) K. A. CHELLIAH PILLAI.

## D 3.

D 8  
Letter from  
Mr. V.  
Navaratna-  
rajah  
as Proctor  
for the Bank  
of Ceylon  
to the Fiscal  
Colombo  
80-1-53

**Letter from Mr. V. Navaratnarajah as Proctor for the  
Bank of Ceylon to the Fiscal, Colombo.**

V. NAVARATNARAJAH,  
Proctor & Notary Public.

“ Saraswathy Vasa ”  
Vannarponnai,  
Jaffna, 30th January, 1953.

The Fiscal,  
Western Province,  
Colombo.  
Dear Sir,

10

Seizure of Lorry No. CL. 5172 under writ in  
Case No. 22280/M. D. C. Colombo.

I understand the above Lorry belonging to Mr. K. A. Chelliah-  
pillai has been seized under writ in the above case.

The above Lorry is under Mortgage to the Bank of Ceylon and  
the Mortgage has been duly registered.

I am instructed by my client the Bank of Ceylon to inform  
you that a sum of Rs. 12,861/56 (Rupees twelve thousand eight  
hundred and sixty one and cents fifty six) and further interest  
from this date is due and owing to them on account of the Mort-  
gage of the said Lorry.

20

Yours faithfully,  
(Sgd.) V. NAVARATNARAJAH.

True copy:  
(Sgd.) Illegibly,  
*Deputy Fiscal, Colombo.*  
22-8-55.

(Seal on  
two fifty  
cents stamps)

30

Typed by : (Intd.)

Compared by : (Intd.)

D 8.

**Mr. V. Navaratnarajah's Letter to the Fiscal, Colombo  
as Proctor for the Bank of Ceylon.**

(Copy sent to the Defendant.)

V. NAVARATNARAJAH,  
Proctor & Notary Public.

"Saraswathy Vasa"  
Vannarponnai,

D 8  
Mr. V.  
Navaratna-  
rajah's  
Letter to  
the Fiscal,  
Colombo as  
Proctor for  
the Bank of  
Ceylon  
(Copy sent  
to the  
Defendant)  
80-1-58

Jaffna, 30th January, 1953.

Residence :

"JEYA GIRI"  
KONDAVIL.

10

The Fiscal,  
Western Province,  
Colombo.

Dear Sir,

Seizure of Lorry No. CL. 5172 under writ in  
Case No. 22280/M. D. C. Colombo.

I understand the above Lorry belonging to Mr. K. A. Chelliahpillai has been seized under writ in the above case.

20

The above Lorry is under Mortgage to the Bank of Ceylon and the Mortgage has been duly registered.

I am instructed by my client the Bank of Ceylon to inform you that a sum of Rs. 12,861/56 and further interest from this date is due and owing to them on account of the Mortgage of the said Lorry.

Yours faithfully,

(Sgd.) V. NAVARATNARAJAH.

Copy to :

Mr. K. A. Chelliahpillai.

D 4.

D 4  
Letter from  
the Fiscal  
Western  
Province  
Colombo  
to the  
Defendant  
5-3-53

**Letter from the Fiscal, Western Province, Colombo,  
to the Defendant.**

**MEMORUNDUM.**

No. S.

Date : 5th March, 1953.

From the Fiscal, W. P., Colombo.

To Mr. K. A. Chelliah Pillai, General Merchant,  
108, Hospital Road, Grand Bazaar, Jaffna.

D. C. C. 22280/M—Sale of Chevrolet lorry  
bearing Registration No. CL. 5172.

10

Sir,

Reference your letter dated the 2nd instant. The above motor lorry was seized on being pointed out by the Plaintiff's Agent. My officer reports that the lorry at the time of seizure was in the possession of your driver and cleaner. The Fiscal, N. P., Jaffna has reported to me that he has complied with the requirements of section 226 of the Civil Procedure Code to enable me to effect seizure.

The Notification of sale appears in the Government Gazette of 13-2-53.

20

Yours faithfully,

(Sgd.) .....  
for Fiscal, W. P.

D 2.

## Proceedings of Sale in D. C. Colombo Case No. 22280/M.

D 2  
 Proceedings  
 of Sale in  
 D. C.  
 Colombo  
 Case  
 No. 22280/M  
 7-3-53

Description of Property.	Name of Purchaser.	Amount Realised Rs. c.	Poundage.
One Chevrolet lorry bearing registration No. CL. 5172 with its accessories.	M. R. Peiris,	1,650.00	19.80
	Broker,	19.80	
	B. C. C. Ltd., P. O. Box 281, Colombo.	1,669.80	

10

Received the above lorry together with its accessories.  
 Prior to the sale, I was informed of the existence of the mortgage  
 to the Bank of Ceylon for a sum of Rs. 12,861/56 (Rupees twelve  
 thousand eight hundred and sixty one and cents fifty six) and  
 further interest owing to the Bank on the mortgage of this lorry.

(Sgd.) M. R. PEIRIS.

7-3-53.

*Witnesses :*

1. (Sgd.) Illegibly.

20

2. (Sgd.) Illegibly.

Sale concluded.

(Sgd.) M. B. C. FERNANDO,

*Auctioneer.*

7-3-53.

Present.

ASLEY J. A. PERERA,

*Representative of Bank of Ceylon.*

True copy of proceedings of sale dated 7-3-53 in D. C.  
 Colombo Case No. 22280/M.

30

(Sgd.) .....

*for Fiscal, W. P.*

Typed by : (Intd.)

Compared by : (Intd.)



D 2  
 Proceedings  
 of Sale in  
 D. C.  
 Colombo  
 Case  
 No. 22280/M  
 7-3-53.  
 —continued.

### Affidavit of Fiscal's Officer Executing Writ.

Affidavit B referred to.

(To be attached to Fiscal's Sale Report).

I, P. A. P. L. Pulle, Fiscal's Officer, solemnly sincerely make oath and say that on the 29th day of January, 1953, I repaired to No. 71, Norris Road, Colombo the boarding or Anande Bavan at Chelliah Pillai of Execution No. 22280/M of the District Court of Colombo to demand payment but he was not present. I was accompanied by N. Nithirajah, the Plaintiff's agent on 29th January, 1953, the property described in my Seizure Report dated 30th January, 1953 (a copy of which is hereto annexed which said property was pointed out by N. Nithirajah, the plaintiff's agent as belonging to the debtor for seizure and sale.

10

(Sgd.) P. A. P. L. PULLE,  
*Fiscal's Officer.*

The foregoing Affidavit was duly read over and truly interpreted to the declarant in Sinhalese, his own language, and he, appearing to understand the contents thereof, wrote his signature thereto at Colombo this 17th day of March, 1953.

Before me.

20

(Sgd.) A. M. SELVARATNAM,  
*Deputy Fiscal.*

Affidavit C referred to.

I, M. B. C. Fernando, Fiscal's Auctioneer, solemnly sincerely and truly declare and affirm that on the 7th day of March, 1953, I duly sold the property described in the Fiscal's Sale Report dated 17th March, 1953 under the Writ of Execution No. 22280/M of the District Court of Colombo.

(Sgd.) M. B. C. FERNANDO,  
*Fiscal's Auctioneer.*

30

Affirmed to before me at Colombo this 17th day of March, 1953.

(Sgd.) A. M. SELVARATNAM,  
*Deputy Fiscal.*

D 6.

## Letter from the Agent Bank of Ceylon to the Defendant.

D 6  
Letter from  
the Agent  
Bank of  
Ceylon  
to the  
Defendant  
12-3-53

Telegraphic Address :

" CEYBANK "

Telephone 138

Codes :

BENTLEY'S SECOND

Peterson's International

REFERENCE

Reply to be Addressed to

" GENERAL MANAGER "

Bank of Ceylon,

242, Hospital Street,

Jaffna.

12th March 1953.

10

K. A. Chelliahpillai, Esq.,  
108, Hospital Road,  
Grand Bazaar,  
Jaffna.

Dear Sir,

Loan No. 228 for Rs. 20,000/-.  
Outstanding — Rs. 12,861/56.

Chevrolet Lorry No. CL. 5172.

20

With reference to the above loan account we have to advise that the above lorry was sold by the Deputy Fiscal of Colombo for a sum of Rs. 1,650/- subject to the mortgage. The purchaser, one Mr. M. R. Peiris, has offered to pay a sum of Rs. 5,850/- and requests that the motor vehicle be released from the mortgage.

Kindly let us know whether you are agreeable to the above condition. If so, kindly forward us a letter of consent.

Yours faithfully,

(Sgd.) Illegibly,  
*Agent.*

Copy to :

30

K. Sockalingam, Esq.,  
Chapel Street,  
Jaffna.

S. K. A. Kathiravelu, Esq.,  
General Merchant,  
Karainagar.

## D 1.

## Fiscal's Sale Report.

## Sale Report.

Description of Property.	Name of Purchaser.	Amount Realised Rs. c.
One Chevrolet lorry bearing registration No. CL. 5172 with its accessories.	M. R. Peiris, Broker, B. C. C. Ltd., P. O. Box 281, Colombo.	1,650.00

10

True copy of Fiscal's Sale Report dated 17-3-53 and true copies of Affidavits B & C dated 17-3-53 in D. C. Colombo Case No. 22280/M.

(Sgd.) .....  
*for Fiscal, W. P.*

22-4-53.

Typed by : (Intd.)

Compared by : (Intd.)

(Seal on One Rupee stamp).

20

## SALE REPORT.

D 1  
Fiscal's  
Sale Report  
17-8-58  
—continued.

No. 22280/M.

By virtue of the Writ of Execution No. 22280/M from the District Court of Colombo. I have to be caused to be seized, on the 29th day of January 1953, and sold after due publication, at the premise garage, Colombo on the 7th day of March 1953, the property enumerated in the annexed list, as will appear from the hereto annexed Affidavits of my officers, marked B & C dated 17th March, 1953.

10	Proceeds were applied as follows :—			Rs. c.
	Total realised	...	...	1,650.00
	Credit to Plaintiff	...	...	—
	Recovered	...	...	1,650.00
	Amount of Fiscal's Fees	...	49.50	
	„ Tom-tom Hire	...	5.00	
	„ Advertisement Charges	...	20.39	
	„ Other Expenses	...	685.52	760.41
			Balance	889.59

20 Balance deposited in the Colombo Kacheheri on the 10th day of March, 1953.

A sum of Rs. 19.80 was also recovered as poundage and credited to revenue—vide Receipt No. 945 dated 10-3-53 attached.

(Sgd.) A. M. SELVARATNAM,  
*Deputy Fiscal.*

Fiscal's Office,

Colombo, 17th March 1953.

D 5.

D 5  
Letter from  
the Fiscal,  
Western  
Province  
Colombo  
to the  
Defendant  
19-3-53

**Letter from the Fiscal Western Province, Colombo,  
to the Defendant.**

My No. S.

Date : 19th March, 1953.

Your No. — of 14-3-53.

From the Fiscal, W. P., Colombo.

To Mr. K. A. Chelliah Pillai,

108, Hospital Road,

Grand Bazaar, Jaffna.

Subject : D. C. C. 22280/M — Sale of Motor Lorry

10

No. CL. 5172.

Sir,

Reference your letter of 14th March. The above lorry was sold to one Mr. M. R. Peiris, as the highest bidder, for a sum of Rs. 1,650/-. Prior to the sale, Mr. Peiris and those present were informed of the existence of the mortgage to the Bank of Ceylon for a sum of Rs. 12,861/56 and further interest. My Sale Report was sent to Court on 17-3-53. Any further particulars regarding the sale could be obtained there from.

Yours faithfully,

20

(Sgd.) .....  
for Fiscal, W. P.