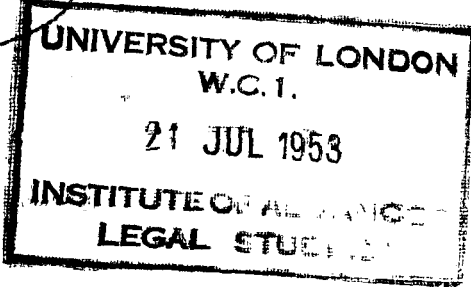


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No.....

Supreme Court of Ceylon  
No. 441 of 1948 (Final)

District Court, Colombo  
No. 16684/M

IN THE PRIVY COUNCIL  
ON AN APPEAL FROM THE SUPREME  
COURT OF CEYLON

MOHAMED AKBAR ABDUL SATHAR.....*Plaintiff-Appellant*

VERSUS

1. W. L. BOGTSTRA, and
2. H. DE WILDT, both carrying on business in partnership under the name style and firm of "Bogtstra and De Wildt".....*Defendants-Respondents*

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RECORD  
OF PROCEEDINGS

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INSTITUTE OF ADVANCED  
LEGAL STUDIES  
25, RUSSELL SQUARE  
LONDON,  
W.C.1.

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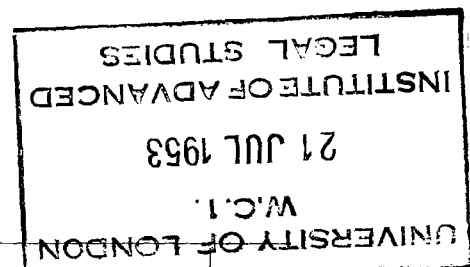


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No.....

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IN THE PRIVY COUNCIL  
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“Bogtstra and De Wildt”.....*Defendants-Respondents*

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RECORD OF PROCEEDINGS

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PART I.

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**PART I**

**No. 1**

**Journal Entries**

No. 1  
Journal  
Entries  
22-12-45  
to  
1-9-48

IN THE DISTRICT COURT OF COLOMBO

No. 16684

M. A. ABDUL SATHAR.....*Plaintiff.*

*vs.*

W. L. BOGTSTRA and another... ..*Defendants.*

**Journal**

10 The 22nd day of December, 1945.

Mr. A. C. M. Abdul Cader files appointment and plaint.

Plaint accepted and summons ordered for 22-2-46.

Intld. W. S.  
*District Judge.*

11-1-46. Summons issued on defendants by plaintiff with precept return-  
able the 21st day of February, 1946.

22-2-46. Summons served on defendant.

Proxy filed.

Answer 15/3.

Intld. W. S.

20

15-3-46. Mr. John Wilson for defendants.

Answer.

S.O. 5/4

Intld. W. S.

5-4-46. Mr. John Wilson for defendants.

Answer filed.

Trial 22/10.

Intld. W. S.

30

15-10-46. Proctor for defendant with notice to proctor for plaintiff files  
defendants' list of witnesses and documents.

File.

Intld. W. S.

*D. J.*

No. 1  
Journal  
Entries  
22-12-45  
to  
1-9-48  
—continued

18-10-46. Proctor for plaintiff with notice to proctor for defendants files plaintiff's list of witnesses and documents and moves for summons.

Allowed.

Intld. W. S.

19-10-46. Summons issued on 7 witnesses by plaintiff.

22-10-46. Trial.

Mr. Hayley with Mr. Kandiah instructed by Mr. A. C. M. A. Cader for plaintiff.

Mr. E. B. Wickremenayake instructed by Mr. John Wilson for 10 defendants.

Defendant is ill *vide* Medical Certificate.

Trial postponed for 28-5-47 on defendant paying plaintiff the cost of today.

Sgd. W. SANSONI,  
*District Judge.*

26-10-46. Proctor for defendants tender stamps Rs. 6/60 for medical certificate tendered on 22-10-46.

1. Stamps Rs. 6.60 affixed to motion and cancelled.

Check and file.

20

Intld. W. S.

28-5-47. Trial.

Mr. A. C. M. A. Cader for plaintiff.

Mr. J. Wilson for defendant.

*Vide* proceedings.

Further hearing tomorrow.

Intld. S. C. S.  
*District Judge.*

29-5-47. Trial.

*Vide* proceedings.

Further hearing tomorrow.

30

Intld. S. C. S.  
*District Judge.*

30-5-47. Trial.

*Vide* proceedings.

Documents 3-6-47.

Judgment 9-6-47.

Intld. S. C. S.  
*District Judge.*

- 3-6-47. Proctor for plaintiff files documents P 1 to P 26 and P 29 to P 30. No. 1  
Check and file. Journal Entries 22-12-45 to 1-9-48  
Intld. S. C. S. *District Judge.* —continued
- 5-6-47. Proctor for defendants files documents D 1—D 5.  
Check and file.  
Intld. S. C. S.  
*District Judge.*
- 10 9-6-47. Judgment not ready owing to strike of Stenographers—all except  
one who was worked to death.  
Stand out 23-6.  
Intld. S. C. S.  
*District Judge.*
- 23-6-47. Judgment duly delivered.  
Enter decree accordingly.  
Decree entered.  
Intld. S. C. S.  
*District Judge.*
- 20 30-6-47. Mr. John Wilson files petition of appeal of defendants-appellants  
against the judgment of this Court dated 26-6-47 and tenders  
stamps to the value of Rs. 42 for Supreme Court Judgment and  
Rs. 21 for certificate in appeal.  
Stamps affixed to blank forms and cancelled.  
Accept.  
Intld. S. C. S.  
*District Judge.*
- 30 30-6-47. Petition of appeal having been accepted and the stamps being  
tendered Proctor for defendants-appellants move to tender on  
7-7-47 security by deposit in Court of a sum of Rs. 250 for any  
costs which may be incurred by the plaintiff in appeal and deposit  
in court a sufficient sum of money to cover the expenses of serving  
notice of appeal. Proctor for plaintiff received notice.  
Issue voucher for Rs. 250.  
Call 7-7-47.  
Intld. S. C. S.  
*District Judge.*
- 40 30-6-47. Proctor for defendants-appellants files application for typewritten  
copies and moves to deposit Rs. 25.  
Issue.  
Intld. S. C. S.  
*District Judge.*



No. 1  
Journal  
Entries  
22-12-45  
to  
1-9-48  
—continued

- 7-7-47. Mr. A. C. M. Abdul Cader for plaintiff-respondent.  
Mr. John Wilson for defendant-appellant.  
Case called.  
Amount correct.

Intld. S. C. S.  
*District Judge.*

Paying in voucher for Rs. 250 issued.  
" " " " Rs. 25 issued.

- 7-7-47. Proctor for appellant files Bond to prosecute appeal with Kach-  
cheri Receipt No 644/92567 for Rs. 250 Kachcheri Receipt 10  
No. 645/92568 for Rs. 25 and notice of appeal.  
1. File.  
2. Issue notice of appeal for 1/8.
- 11-7-47. Proctor for respondent files application for typewritten copies and  
moves for a paying-in-voucher for Rs. 50.  
Issue.

Intld. S. C. S.  
*District Judge.*

- 1-8-47. Notice of appeal served on proctor for plaintiff-respondent.  
Forward record to S. C.

Intld. S. C. S. 20  
*District Judge.*

- 23-12-47. With reference to his notice under Section 81 of Income Tax  
Ordinance issued on 30-5-47, the Commissioner, Income Tax  
requests that this case be treated as withdrawn, as the tax has  
been paid by the defaulter.  
Note and file.

Intld. S. C. S.  
*District Judge.*

- 1-9-48. Record forwarded to Registrar, Supreme Court.

**Plaint of the Plaintiff**

IN THE DISTRICT COURT OF COLOMBO

MOHAMED AKBAR ABDUL SATHAR of "Jeelani Manzil"  
2nd Division, Maradana, Colombo.....*Plaintiff*.

No. 16684

*vs.*

1. W. L. BOGTSTRA and
2. H. DE WILDT both carrying on business in partnership  
under the name style and firm of "Bogtstra and De  
10 Wildt" of Australia Buildings, Fort, Colombo.....*Defendants*.

On this 22nd day of December, 1945.

The plaintiff of the plaintiff abovenamed appearing by Ahamed Casim Mohamed Abdul Cader his proctor states as follows :—

1. (a) The defendants reside and carry on business in partnership under the name style and firm of "Bogtstra and De Wildt" in Colombo within the jurisdiction of this Court.
- (b) The cause of action hereinafter set forth arose in Colombo within the jurisdiction of this Court.
- 20 (c) The plaintiff was employed under the defendants in 1937 on terms and conditions mutually agreed upon between them.
2. Late in 1939 it was agreed between the plaintiff and the defendants inter alia as follows :—
  - (i) That the plaintiff should be in charge of the General Import Department of the firm (excluding textiles) including organising and canvassing sales.
  - (ii) That the plaintiff should be paid the salary of Rs. 150/- per month and 1/8th share of the nett profits of, and/or earned by, the said department as his remuneration.
  - 30 (iii) That this agreement was to be operative as from 1st April, 1940.
3. In terms of the said agreement the plaintiff worked in charge of the said department from 1st April, 1940 and was paid the salary aforesaid and the 1/8th share of the nett profits for the years 1st April 1940 to 31st March 1941, 1st April 1941 to 31st March 1942 and 1st April 1942 to 31st March 1943 with minor agreed adjustments.

No. 2  
Plaint of  
the Plaintiff  
22-12-45  
—continued

4. (a) The plaintiff has not been paid his share of the profits for the year 1st April 1943 to 31st March 1944.
- (b) The defendants were deliberately postponing and evading the determination and payment of the amount of the said share.
- (c) The plaintiff assesses the nett income of the said department at a sum of Rs. 225000/- for the said period.
5. Early in 1944 the salary of the plaintiff was by agreement increased to Rs. 500/- per month in addition to the aforesaid 1/8th share of the nett profits.
6. On or about the 29th November 1944, the defendants wrongfully<sup>10</sup> and without any cause or justification notified the plaintiff that his services were no longer required and terminated the services as from 31st December 1944.
7. (a) The plaintiff was not paid the 1/8th share of the profits for the period 1st April 1944 to 31st December 1944.
- (b) The plaintiff assesses the total nett profits at Rs. 35,000/- for the said period.
- (c) The plaintiff states that he is entitled to be paid the 1/8th share of the profits in all transactions arranged or executed by him and on all contracts put through by him before 31st December<sup>20</sup> 1944 but in respect of which goods were delivered and/or performance was completed after 31st December 1944. The plaintiff assesses the total nett income in respect of same in a sum of Rs. 25000/-.
- (d) The plaintiff was paid his salary to end of November 1944.
8. The plaintiff states that he is entitled to be paid also:—
- (a) his salary till end of March 1945 amounting to Rs. 2000/-. The said sum of Rs. 2000/- is claimed in the alternative as damages in addition to the salary for December 1944. The plaintiff states that he has suffered damages in a sum of<sup>30</sup> Rs. 1500/- being three months' salary for the wrongful dismissal aforesaid.
- (b) The 1/8th share of profits till 31st March 1945 or in the alternative to 1/8th share of the profits as stated in para (c) above.
9. By virtue of the premises above set forth causes of action have accrued to the plaintiff:—

(i) to claim from the defendants:—

(a) 1/8th share of the said Rs. 225000/- i.e. a sum of Rs. 28,125/-.

(b) 1/8th share of the said Rs. 35,000/- i.e. a sum of Rs. 4375/-.

(c) the said sum of Rs. 2000/- as salary and damages.

(d) 1/8th share of the said sum of Rs. 25,000/- i.e. of Rs. 3125/-.

10 (ii) for an accounting to ascertain profits for the period aforementioned.

10. The defendants failed and neglected to pay the said sums of Rs. 28,125/-, 4375/-, Rs. 2000/- and 3125/- aggregating to Rs. 37,625/- though thereto often demanded.

Wherefore the plaintiff prays that the Court be pleased:—

(i) to order an accounting to be taken to ascertain the nett profits of the General Import Department of the defendant firm for the years 1st April 1943 to 31st March 1944 and 1st April 1944 to 31st March 1945.

20 (ii) to order the defendants to pay plaintiff a 1/8th share of the profits for the period in respect of which claim is made as ascertained in the said accounting.

(iii) to order the defendants to pay in addition to share of profits the said sum of Rs. 2000/-.

(iv) that in the event of the defendants refusing and neglecting to render an accounting as aforesaid to order the defendants to pay plaintiff the sum of Rs. 37,625/- with legal interest thereon from date hereof till date of decree and thereafter on the aggregate amount at the same rate till payment in full.

30 (v) for costs and for such other and further relief as to this Court shall seem meet.

Sgd. A. C. M. ABDUL CADER,  
*Proctor for Plaintiff.*

#### Documents relied on

- (1) Letters and correspondence.
- (2) Defendants books of accounts.

**Answer of the Defendants**

IN THE DISTRICT COURT OF COLOMBO

MOHAMED AKBAR ABDUL SATHAR of "Jeelani Manzil"  
 2nd Division, Maradana, Colombo.....*Plaintiff.*

No. 16684

*vs.*

1. W. L. BOGTSTRA and
2. H. DE WILDT both carrying on business in partnership  
 under the name style and firm of "Bogtstra and De  
 Wildt" of Australia Buildings, Fort, Colombo.....*Defendants.* 10

On this 5th day of April 1946.

The answer of the defendants abovenamed appearing by John Wilson their proctor states as follows:—

1. The defendants deny all such averments in the plaint as are not hereinafter admitted.
2. The defendants admit the averments in para 1 (*a*) and 1 (*c*) of the plaint but denies that any cause of action has accrued to the plaintiff against the defendants as set out in paragraph 1 (*b*).
3. Answering to paragraph 2 the defendants state that the plaintiff was engaged in July 1937 on a salary of Rs. 150/- a month and was 20 employed in the General Import Department of the Firm. The defendants specially deny that there was any agreement in 1939 or at any other time that the plaintiff should in addition to the said salary be paid as his remuneration 1/8th share of the nett profits or any other share from 1st April 1940.
4. Answering to paragraph 3 the defendants state that the plaintiff was paid his salary with minor agreed adjustments as set out therein from 1st April 1940 to 31st March 1943. The defendants specially deny however that the plaintiff was paid 1/8th share or any other share of the nett profits. The defendants state that the plaintiff was in addition to the said 30 salary paid an ex gratia bonus of Rs. 5000/- for the years ending 31st March 1941 and 31st March 1942 and an ex gratia bonus of Rs. 4000/- for the year ending 31st March 1943 in addition to a dearness allowance of Rs. 1200/- paid during the period July 1941 to December 1943. The defendants state that the said payments of Rs. 5000/- and Rs. 4000/- were

not in terms of any agreement between the parties but merely a matter of bounty on the part of the defendants.

No. 3  
Answer  
of the  
Defendants  
5-4-46  
—continued

5. Answering to paragraph 4 of the plaint defendants deny that the plaintiff is entitled to any share of the profits for the period 1st April 1943 to 31st March 1944 or that the defendants postponed or evaded payment of any moneys due to the plaintiff or that the nett income of the General Import Department of the firm of Bogtstra & de Wildt is the sum of Rs. 225000/-.

6. Answering to paragraph 5 of the plaint the defendants state that from the 1st January 1944 plaintiff's salary was Rs. 500/- per mensem but deny that the said salary was in addition to 1/8th share or any share whatever of the nett profits of the said department.

7. Answering to paragraph 6 of the plaint the defendants state that in the month of November 1944 it was mutually agreed between defendants and the plaintiff that the plaintiff should resign from his post under the defendants from the 31st December 1944.

Further answering to the said paragraph defendants state that they were always ready and willing to pay plaintiff the sum of Rs. 500/- being salary due for the month of December 1944 which sum the defendants bring to the credit of this case.

8. Answering to paragraph 7 of the plaint the defendants deny that the plaintiff is entitled to a 1/8th share or any other share of the profits of the said department for the period 1st April to 31st December 1944 or that the sum of Rs. 25000/- or any other sum is payable to the plaintiff.

Further answering to the said paragraph defendants deny that the plaintiff is entitled to recover the sum of Rs. 1500/- as damages or otherwise.

9. The defendants deny the averments set out in paragraphs 9 and 10 of the plaint.

Wherefore the defendants pray :—

- (a) that the claim in excess of the sum of Rs. 500/- be dismissed with costs, and
- (b) for such other and further relief in the premises as to this Court shall seem meet.

Sgd. JOHN WILSON  
*Proctor for Defendants.*

No. 4  
Issues  
Framed  
28-5-47

## No. 4

### Issues Framed

No. 16684

28-5-47

Advocate HAYLEY, K.C., with Advocate KANDIAH for the plaintiff.

Advocate E. B. WICKREMENAYAKE for the defendant.

Mr. Kandiah opens his case and suggests :

1. Was it agreed that the plaintiff should receive in addition to his salary 1/8th of the nett profits of the General Import Department from 10. 1-4-40 as stated in the plaint.

2. Have the defendants failed to pay the said share from 1-4-43 to 31-12-44.

3. Is plaintiff also entitled to 1/8th of the profits earned between 1-1-45 and 31-3-45 as claimed in para 7C of the plaint.

4. Is plaintiff entitled to Rs. 2000/- as damages less the sum of Rs. 500 brought into Court.

5. Is defendant liable to render an account of the profits from 1-4-43, and if so for what period.

Mr. E. B. Wickremenayake agrees to these issues and suggests : 20

6. Was the plaintiff paid a 1/8th share of the nett profits for the years 1-4-40 to 31-3-41; 1-4-41 to 31-3-42 and 1-4-42 to 31-3-43.

7. If not were the payments paid to the plaintiff at the end of the said periods in the nature of ex gratia payments.

8. Was it agreed between plaintiff and defendants in the month of November that the plaintiff should resign as from 31-12-44.

9. If so is plaintiff entitled to claim any sum by way of damages.

I accept all the issues.

---

## No. 5

### Plaintiff's Evidence

30

No. 5  
Plaintiff's  
Evidence  
M. A. Abdul  
Sathar  
Examination

Mr. Kandiah calls :

M. A. ABDUL SATHAR, affirmed.

I am a business man. I was educated at Zahira College and I passed my Matriculation and after that joined the firm of Ibrahim Saibo & Co., Diyatalawa.

I met the defendant at Diyatalawa somewhere about September 1932 or so. For some years thereafter I knew him. I joined the firm of Bogtstra & de Wildt in July 1937. Mr. Bogtstra used to come to Diya-

talawa and in 1933 1934 when I was in the firm of Ibrahim Saibo & Co. he was very closely associated with me and he was putting up a building there about that time and he wanted me to supervise the work there. In 1936 there was trouble in Ibrahim Saibo and Co. at Diyatalawa and I did not want to stay in that firm any further. Mr. Bogtstra said I should join him and I joined him. Letters passed between us and he offered me certain terms. He offered me a salary of Rs. 150/- a month. At that time the nature of the business carried on was in piece goods and they were doing business in stock lines like milk, confectionary, biscuits, etc. After 10 some time about 1939 about the end of that year I found there were possibilities of developing the indent business of the firm and when business started coming in I said that I should be given a commission, not on the gross sales but on the nett commission earned by the department—I mean on the nett profits of the department. I suggested this to Mr. Bogtstra and he agreed. My salary was to continue at Rs. 150/- a month. I think there was a temporary reduction in salaries earlier of 10 per cent about that time. That reduction applied to all the staff.

No. 5  
Plaintiff's  
Evidence  
M. A. Abdul  
Sathar  
Examina-  
tion  
—continued

The agreement between myself and the defendants was that I would be paid a 1/8th share of the profits of the sundries department besides my 20 salary of Rs. 150/-. I was to be paid this as from 1-4-40. At that time Mr. Karalasingham who was in charge of the piece goods department and was known as the broker of that department was also being paid a commission. His salary was Rs. 125/- and he was paid a commission ranging from 1/4th per cent to 3/8th per cent on the gross sales.

(Mr. Wickremenayake objects unless Mr. Karalasingham is called. I shall eliminate from the evidence anything in the nature of hearsay).

The total sums he used to draw as commission was between Rs. 500/- and Rs. 600/- on an average a month, but I am not certain of these amounts, the books will show it. The agreement I just referred to was 30 between Mr. Bogtstra and myself and also Mr. de Wildt, but I had that business relationship with Mr. Bogtstra personally.

At Diyatalawa I was running a store known as M. A. Sathar & Co. and Mr. Bogtstra used to advance me the capital for that business and we shared the profits. He and I were partners in that business and the business was run under the name of M. A. Sathar and Co. That business was wound up and we looked into the accounts and the profits were divided in the ratio agreed upon on 26-8-44 and on that day Mr. Bogtstra gave me this document P1. P1 is exclusively in respect of that business that was carried on between Mr. Bogtstra and myself and the second defendant 40 de Wildt had nothing to do with that business.

I was paid my 1/8th share of the profits for the year ending 31-3-41. I had drawn an advance of Rs. 2500/- on 4-1-41. I asked for that because I was in need of money. I told him there was money due to me on the commission account and I said I must have it and that was paid to me by



No. 5  
Plaintiff's  
Evidence  
M. A. Abdul  
Sathar  
Examina-  
tion  
—continued

a cheque on the Hongkong Bank. Victoria wrote out the cheque. He was the accountant in charge of the books. That cheque was signed by Mr. Bogtstra. I was present when it was written. The counterfoil was filled. I gave a receipt for it.

(Mr. Kandiah calls for the counterfoil—handed—it is marked P2. It is agreed that for the record a copy will be furnished so that the original may be returned to the defendant).

I point to the fact that in the counterfoil “advance against commission” has been entered. I can identify that writing. It is de Wildt’s handwriting. I gave them a receipt for the payment on that same day. 10

(Mr. Kandiah calls for the receipt. Mr. Wickremenayake says no receipt was given).

I have a copy of the receipt. I produce copy of the receipt P3 dated 4-1-41. They have a cash book ledger journal etc.

(Mr. Kandiah calls for the cash book. Mr. Wickremenayake says it is not here at the moment but will be produced later.)

I produce P4 ledger page 112 for the years 1-4-38 onwards till 31-3-40. I point to the entry under date 4-1-41 “advance against commission Rs. 2500”.

I produce P5 ledger for the period 1-4-41 onwards, page 79 and I 20 point out under date 14th July to the entry “Cash in settlement of commission Rs. 2399.43”. I also point out to the entry under 30-10-43 in P5 “cash in settlement of commission Rs. 8500”.

Apart from my salary I was also paid a bonus at the end of the year. There is a pass book in which the monthly salaries of the staff are entered and the annual bonus given at the end of the year is entered in that book and the totals are entered in the salary account. That bonus will therefore not appear in P4 or P5. Before the balance sum of Rs. 2399 was paid to me I and Mr. Bogtstra looked into the account to ascertain the profits. I wanted money and the accounts are supposed to have been closed on 31-3 30 and I reminded about my commission and I was told that the books were not finally balanced and that would take place in June or July and Mr. Bogtstra went through the books with me and wrote the figures on a piece of paper and ascertained the profits to be Rs. 57000 odd. I produce P6 the paper on which Mr. Bogtstra wrote out the figures and handed to me. Rs. 57754/60 was the total amount of the profits. He said that the department charges must be deducted and an amount set aside for income tax etc. and he deducted Rs. 17754 and arrived at the figure of Rs. 40,000 and said I was entitled to Rs. 5000/- as my commission. I agreed to that. That paper is in Mr. Bogtstra’s handwriting. After arriving at the Rs. 5000 I 40 asked him to give me a cheque for the balance and a cheque was given for Rs. 2399/53.

(Mr. Kandiah calls for the counterfoil of 4-7-41—handed. Marked P7.)

(He draws the attention of the court to the fact that the counterfoil bears the words "In settlement of his commission account personal").

No. 5  
Plaintiff's  
Evidence  
M. A. Abdul  
Sathar  
Examina-  
tion  
—continued

I gave a receipt for the amount. (Mr. Kandiah calls for the receipt. Mr. Wickremenayake says defendant holds no receipt. Copy marked P8).

(Mr. Wickremenayake objects to the production of the copy on the ground that it has not been listed).

(I uphold the objection. Document P8 is ruled out).

The sum of Rs. 5000 for purposes of income tax has been reckoned as against salary account. Bonus has never been paid at the middle of a year at any time nor at the beginning of a year, they do not usually do that. I have never been paid bonus except in December except that once he paid me a bonus for another purpose that is when Mr. de Wildt was having his 25th Anniversary he sent me a cheque in the middle of the year. That was not a payment by the firm but by de Wildt.

I was given a statement of account for the year ending 31-3-41 because I asked for a statement. That statement was given by Mr. Bogtstra. That statement was a copy of the ledger. After 1-4-44 I was paid a salary of Rs. 150. After that date I was also paid a share of the profits, Rs. 9000 for the period ending 1942 and March 1943. Accounts were looked into between myself and Bogtstra. A statement was given to me by Mr. Bogtstra. I produce that statement P8. The total of the amount of the profits for 1942 1943 was about Rs. 14000. We arrived at Rs. 72,000 as the divisible profits. During 1942 and 1943 the piece goods department was not bringing in a return and he said that overhead charges were rising, that expenses had to be put down and that bonuses were being and dearness allowance and saying that he deducted about Rs. 75000 for all those things and he said there was only Rs. 72000 to be divided. P8 is in the handwriting of Victoria. A sum of Rs. 500 had been paid to me by cheque earlier that because I wanted an advance in December 1941. On 20-12-41 the entry in P5 is "Advance against salary".

(Mr. Kandiah calls for the counterfoil of 20-12-41. Mr. Wickremenayake says no notice to produce given).

The sum of Rs. 8500 was paid on 31-10 by cheque. That was after we had gone into the accounts on the basis of P8. I point to the fact that under the date 30-10 in P5 there is an entry "cash in settlement of commission Rs 8500". I was not paid any commission thereafter. I worked till December 1944 and I was not paid my share of the profits for 1-4-43 to December 1944 although that was the best year. That was not a very good year for the Fort firms, in the Pettah it might have been alright and we were one of the few who had such good business during that period. The turnover was Rs. 15 to 16 lacs of rupees and the estimated profit would have been about two lacs twenty five thousand. That was the profit for a period of 9 months. From their books I will be able to find out what the profits were of that period and I therefore asked for an account to

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be taken of the profits of that period. I want an accounting in respect of that period 1-4-43 to 31-3-44. At that time Mr. Bogtstra was ill and during the early period of 1944 he was mostly absent from office and he was at Nuwara Eliya for about two months and so whenever I asked for the accounts I was put off, they used to say the books were not ready, that he was not well and so on and there was also internal trouble in the office between the partners, they were quarrelling over various things. Mr. Bogtstra spoke to me about the trouble between himself and de Wildt. He used to say that de Wildt was keeping away and was not doing any useful work for the firm and that he was asking de Wildt to retire and that it was 10 very likely that de Wildt would ask for an annuity of Rs. 12000, that he did not want that burden and wanted to know what I had to say about it. I said I did not agree to that course, that Mr. de Wildt had also been my employer and that I would not be a party to that and I told him that all that was irrelevant to me and that I had to have my commission. When Mr. Bogtstra knew I was not going to side him he wanted me to refer the matter to de Wildt and I discussed the matter with de Wildt and I asked him to let me have my share of the profits. He told me that Mr. Bogtstra had told him that I was keen of doing business on my own and that is why they were delaying payment. I told him that was false and that Mr. Bogtstra had 20 discussed about it with me and had spoken about sending me away and that I was feeling my position to be insecure in the office especially as the partners themselves could not agree. My relationship with Bogtstra was very cordial till then and after that it was very strained and he would not talk to me. In the early part of 1944 there was trouble with the C.D.C. and that continued till about September 1944 where a sum like Rs. 2½ lacs were involved and about Rs. 90000 of that sum was the money of Habib & Co. I had intimate knowledge of that matter and my presence was necessary in regard to that. The dispute in regard to that matter was settled about the end of November. After that was settled I 30 received a notice to leave. It was immediately after that. I was surprised to get notice, I did not expect such a notice. I was wrongly served with that notice and I ask for damages in three months' salary. I was being paid Rs. 500 a month from January 1944—in fact although it was agreed that I should be paid that salary from January 1944 the cheque was not given to me till about March 1944. Before that I was paid Rs. 150 and dearness allowance which was a payment of a month's salary once in three months. When my salary was increased to Rs. 500 there was no talk that I would not be paid my share of the profits, it was understood that I should get my share of the profits but no dearness allowance because they 40 said my salary included that and that that was operative only from January 1944.

I estimate the profits for the period 1-4-43 to 31-3-44 at about two and a quarter lacs and I say that I am entitled to be paid 1/8th share of the profits of Rs. 28125 for the period ending 31st December 1944 and I am entitled to Rs. 4375. But there was work done by me prior to my leaving the firm in respect of which the goods had arrived and merchants had

received the goods and the profits on that worked out at Rs. 25000 and I ask for my share of that Rs. 3125. For the wrongful dismissal I claim Rs. 1500 in addition to my salary of Rs. 500. I therefore ask for judgment in Rs. 37625.

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I have a book of account kept by me. I produce my ledger P9. In P9 I have the accounts relating to the Diyatalawa firm, and also it shows what moneys I have been drawing from defendant firm. I point out under date 4-1-41 on page 3 the entry in respect of Rs. 2,500. Under date 16-7-41 on page 92 I point to the entry of the payment of Rs. 2,399.53. Under date 20-12-44 on page 15.3 I point to the item of Rs. 500 paid by cheque. I had not entered there the Rs. 8,500 because during that period when that money was paid I was not keeping this account. That account of mine was necessary because I was running my business at Diyatalawa and till the end of 1941 I maintained this book because I had advanced moneys on that business and after that I closed that account as there was no necessity to keep that personal account any longer. Whatever purchases were made and advances made in respect of that business were entered here. Even after December 1941 I made purchases for that business but I kept a separate account of that.

20 (The cash book is now handed over by the defendants).

I produce P10 defendant's cash book for the period from December 16, 1940 to 11-8-42. Under date 4-1-41 at page 4 appears the entry in relation to the payment of Rs. 2,500 and it states advance against commission. On page 39 of P10 under date 14th I point to the entry "Account M. A. Sathar in settlement of commission Rs. 2,399.53." I point out on page 67 of P10 under date the 20th "Account M. A. Sathar advance against salaries Rs. 500." That was not an advance against salary but an advance against commission. I used to get my payments from Mr. Bogtstra and I asked for money from him. I told him specifically that that should be against commission and it is on that basis that he gave it to me.

I produce P11 cash book of the defendant from August 13, 1942. On page 53 of P11 I point out under date August 30th in relation to the payment of Rs. 8,500 "account M. A. Sathar balance of commission Rs. 8,500". I say I am entitled to be paid the sum of Rs. 37,625 claimed in the plaint.

Cross-examined.

My claim is for 1/8th of the nett profits of the sundries department. My agreement with Mr. Bogtstra was for a share of the nett profits of the sundries department. It is not commission. I am not claiming a commission. All along my position has been that it is 1/8th of the profits—1/8th of the nett profits earned by that department. That was my agreement with Mr. Bogtstra. In the books the payments are referred to as commission, I do not know why, I was not in charge of the administration. These books were kept by one Victoria. Victoria is now employed not under me but under my firm in Madras. I am a partner in that firm. I deny that I got the information I have from Victoria, I had kept a record of the work I

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did. I have got that record. I had no access to the defendant's books. I was allowed to see the figures for the 1st year 2nd year and third year by Mr. Bogtstra. They were the annual totals. The sums paid to me of Rs. 5000 and Rs. 4000 represent 1/8th share of the nett profits. I can produce a statement showing the nett profits for those years. I got references to the counterfoils when I was paid because I signed receipts for what I was paid. Victoria did not give them to me.

(Shown P3) I wrote this in the office.

With regard to the Diyatalawa business I deny that I first approached Mr. Bogtstra for a loan. My brother was employed in that firm and my 10 uncle. There was no other relation of mine in that firm. My brother-in-law might have been there for sometime. Mr. Bogtstra had advanced Rs. 1500 at the earlier stages by small amounts and in all he had advanced about Rs. 5000 or Rs. 6000 and the agreement was that he should get 1/2 of the profits. I admit I did not disclose my profits to the income tax department. When I know what I have to pay I will pay it. Mr. Bogtstra did not wind up that business. I wound it up. The accounts were audited at Colombo. Mr. Bogtstra did not send anyone to wind up that business, it was wound up after looking into the accounts. I wound it up because the man who let out the superstructure to me was pestering me to pay him 20 Rs. 12000 for it. It was not worth that and I was forced to close the business.

When Mr. Bogtstra took me over I was employed under Abraham Saibu and Co. and I was getting Rs. 60 a month while there and 1/14th of the profits. They had 7 or 8 branches and they used to make about Rs. 10 or Rs. 15000 a year and I got 1/14th of that. In addition to that I had free board and lodging. I gave all that up for Rs. 150 a month to work under Mr. Bogtstra. When I joined him there was no understanding about the profits. The next year there was a cut in the salaries and my salary was reduced to Rs. 135/-. That was a general cut in all salaries. I 30 was in charge of the sundries department and also I had to go out supervising the sales at outstations. That is because at that time for about two years we were dealing mostly in milk biscuits, confectionary and things like that. There were two vans running round the Island and I had to supervise those salesmen and I was sent to Jaffna to organise the milk business there. I was not a canvasser, I was even given a Fiat car when I joined. I was in charge of the General Import department of the firm, as I have stated in the plaint. There was such a department. I was in charge of that department. Mr. Bogtstra used to be there and whenever I wanted instructions I take them from him. He was not a sleeping 40 partner, he was in charge of the department and I worked under him as his direct assistant. All the work done in that department was done through me. I do not know whether it can be said I was in charge of the department but I was his direct assistant. I was not a canvasser—I used to do organising work and there were times when I supervised Mr. Ordens work and also the travelling salesmen. Mr. Bogtstra mainly looked after the

piece goods department before I joined. There are two parts of the business one dealt with the textiles and I had nothing to do with that. I do not know whether Mr. Bogtstra had a large clientele outside Ceylon, he had connections outside Ceylon. Some of them were introduced after I joined and they are the ones which paid most. My business was not to go round and get persons to buy these goods, I was not canvassing orders, I was booking indents. No one in the firm knew about the firm in the Pettah and I introduced those people to the firm. The invoices for the importation of goods were not attended to by Mr. Bogtstra, he used to prepare the bills.

10 The indenting was done by me, I wrote out the intends and did all the work connected with that. It was not clerical work that I did, even the fixing of prices I did myself. There were instances where the firm made a normal commission of only five per cent and I found that by buying outright and selling outright more money could be made and I introduced that system.

I was paid Rs. 150 a month and given a Christmas bonus of a month's or half month's salary. From July 1940 to December 1940 my salary was reduced that is because of the slump in the business. In January 1941 my salary was raised again to Rs. 150 and that was done in the case of the rest

20 of the staff also. That is because business improved. I gave an assurance that the business would improve and there were already signs of its improving and the salaries were raised. Mr. Bogtstra during this period suggested that I should get 1/8th of the profits because I was bringing in business and because I had told him I was not satisfied with the Rs. 150 and wanted more. I was not keen on having a flat rate of commission on the gross sales because I made the margin of profits go up to even 30 or 50 per cent. I said I must have a share of the gross commission. Then he said he could not give on the gross commission and that he did not want to treat me like other brokers.

30 I started in 1937 and I started bringing in business after 1939. It is when the salaries were cut that I said I could bring in business and I found I could do a lot by developing the indenting section and I developed it by writing to various connections outside Ceylon and getting in touch with exporters in American and other places and by studying the market conditions and concentrating on sugar and coffee. It is true I got in touch with those people outside through the firm. I wrote from the firm. I drafted the letters and sent telegrams. I was practically in charge of the department. The letters were drafted and put before Mr. Bogtstra and he got them typed and I sent them. I do not suggest that it was my personality which

40 got these clients, it was my work. I do not know whether anybody could have done that work. I claim 1/8th share of the profits because that was promised for the work I was doing. I took that promise and then started working like that. I was promised that share of the profits because I was bringing in business. We used to discuss about business matters every day. I told Mr. Bogtstra I could bring in business and that I must have a better salary. No, what I said was better terms because I could not work for Rs. 150. I said if I could get better terms and could bring in better busi-

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ness and I told him you have seen the possibilities and so on and then he said he would give me 1/8th share of the net profits. I do not know whether the nett profits of the firm for 1940/41 was Rs. 99,000. The textile part of the business was doing nothing during that period. There were some textiles coming in during 1940 1941. In 1941/42 there were no textiles coming in. The profits for that period were a lac and 6 thousand from my department alone. I have no writing to prove the promise to give me 1/8th share of the profits. I have witnesses to prove it. Nobody overheard the conversation about the agreement. Mr. de Wildt knows about it. I did not get it in writing because we were moving in such terms of cordia-10 lity and I never thought he would go back on his word. I was a businessman, it is true, but I was then 10 years younger. I have been doing business since 1932. I deny that I am taking advantage of the fact that the word "commission" had been used, to make this claim. Victoria left the firm two months back and he had been there for two years after I left. I brought this action in December 1945. I left the service in December 1944. I had work in Madras in the meantime building up a business there and is the cause of the delay. My proctor wrote on 4-12-44 about my claim (Mr. Wickremenayake marks the letter D1). Mr. Bogtstra undertook to pay me the 1/8th share on my undertaking to bring in business. At the end of 1939<sup>20</sup> he agreed to pay the share of the profits as business was coming in and I was working hard. Till the end of 1939 I had not brought in business because there was no opportunity given for me to do so. That was the time I was being sent out to organise the milk sales etc. I did not go with a Dutch Assistant to do that business. Up to that point of time I was doing the work and had brought in some good business that year. In the previous year that department had not paid anything. That is prior to 1937. (Reads letter D1) "On the basis agreed on" is a 1/8th share of the nett commission. There were lines where we had a commission of three per cent. If that commission in commercial lines we do not call it commission. Nett<sup>30</sup> profits means commission earned in the department deducting salary and other expenses. We were not handling the goods ourselves we passed the indent and opened letters of credit which most firms did not do with Pettah merchants and on my assurance it was done here. I gave a guarantee with regard to the Pettah merchants and that was approved of by Mr. Bogtstra. I was the highest paid on the staff at the time and there were even European salesmen at the time drawing Rs. 180 and so on. On my guarantee the firm got more business and more profits, otherwise they would have earned their three per cent only and it was I who started the system of buying outright and selling outright. We were not the agents of those people. We<sup>40</sup> bought and sold outright noting the fluctuations in the market and so on. We never saw or handled the goods when the documents came they were made out to the dealers on payment. All that was not done by Mr. Bogtstra, I was in charge of everything. I wanted Mr. Bogtstra's assistance because I had no authority in the firm. I did not run the firm, he ran the firm and he wanted me to run it for him. Mr. Bogtstra was not running this firm for 25 years, it was only from 1931.

On 18-12-1944 my proctor wrote D2. This was not a blackmailing letter. I have no grudge against Mr. Bogtstra I have still the greatest regard for him. The exposure I refer to in this letter is when the Civil Defence Commissioner wanted to apportion the goods to certain dealers who were to get 5 per cent and the indenting firm 3 per cent. Tables were turned on them and the dealers got 3 per cent and the firms 5 per cent. What was legally due to the dealers were taken by the firms, that is the exposure I referred to. I did not say I would come out with that story unless I was paid. These are things which would reflect on the firm I realised as a businessman and it would not be nice to expose these trade secrets. I thought if there was an inquiry I would have to come out with these things in evidence. It has a lot to do with me I say because I have to recover my money. The books are balanced for the period 1-4 to 31-3 but it is not then that Mr. Bogtstra would be in a position to say how much is due to me because the accounts are not completed till about June or July. Mr. Bogtstra had a rough idea of how much his firm was earning. I used to take advances and those sums were debited in their books. (Shown P6) I got this from Mr. Bogtstra. We sat down together and worked it out and he gave me this and I have it in my possession. That was in June 1941. Mr. Bogtstra took down the figures and put them down to ascertain the profits. That was for the year ending March 1941. These were not notes made by him for his own purposes. They had agreed to show me the balance sheet.

The sums paid to me do bear a proportion to the nett profits of the firm. There is the figure 57754.60 on this paper. Mr. Bogtstra subtracted 17000 from that as being departmental charges. That is in respect of the departments outside the textile department. The usual annual charges amount to about Rs. 19000. 57000 is the total commission earned by that particular department and the expenses were the general expenses. I went into the figures with him and I was satisfied that Rs. 17000 was the working expenses. He said so and I agreed. It was a mutual adjustment. I would have told him it was wrong if it was wrong by a few thousands. The figures were taken straight from the books and I did not dispute them. I saw the books. I did not examine them. I saw the figures in the books. I examined the books. I did not check them. I knew that the firm's accounts were regularly audited and I only looked at the relevant pages and saw what the sundry department paid, the sugar department and the coffee department and I was satisfied.

1/8th of 40,000 was Rs. 5,000. I did not mind losing a few hundreds. We were on very friendly terms. The next year there was the Japanese raid and we could not go into it. We did that the year after that. On that occasion he said it was so much according to the books. I asked how he got at the figure and then he asked Victoria to get an extract. I said it should be much more because I had a rough idea of the business done. I did not have a book I had a record of the business done in the Pettah. On that occasion I got Rs. 9,000 for the two years. The profits for the two years would have been 76,000. Mr. Bogtstra gave me a figure which worked

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out at 146,000 for both years and out of that he said there would be the increases to the staff the dearness allowance excess profits and income tax to be paid and deducting all that he said it would be about Rs. 75,000. I accepted his word. I accepted because the accounts had been audited by Chartered accountants. I had not seen the auditors report. I was not paid on the basis of that report. I had confidence in him and the figures were from the books. It is not true that he simply paid me a lump sum if that is so there was no necessity for him to have gone through the accounts, and for both of us to sit together and do it. 1/8th of 146,000 would come to 18,000. That is 9,000 more than I was paid. There was no necessity for me to check those accounts I accepted his word because he told me about the excess profit duty etc. About the end of 1943 December I told him that I wanted more salary that I was a married man and so on. I was just then offered a job in India on very attractive terms and I said if I was to remain my salary should be Rs. 500 with dearness allowance and the usual commission. My salary was not enough and I wanted a higher salary. I was definite about my share of the profits because that was a practice which had been going on. The firm was making big profits at this time and 1/8th of that would be a big sum but when I asked for the increase in salary the profits were not so big because there was trouble in the office and the business was affected. I deny that he offered me Rs. 400 and I asked for 500 and he paid me that.

Luncheon Interval.

Sgd. S. C. SWAN,  
*District Judge.*

28-5-47.

(After Lunch)

M. A. ABDUL SATHAR, affirmed.

Cross-examination continued.

(Shown P5) These amounts are entered as bonus. The contra is journalised to balance the book. The journal statement puts it as bonus.

I next interviewed Mr. Bogtstra in September 1944. I asked him for commission. He did not say that he was not giving me a commission; he was putting it off. He said he would go through the accounts and let me know later. That was the usual practice in previous years.

I maintain that we did not see the goods. We did not handle the goods. We only handle the sale of the goods.

If it is 3 or 5 per cent it is commission; if it is more than that it is profits. That is why I maintain that I am entitled to a share of the profits.

September was not the first time I asked for a commission. It might have been the 3rd or 4th time.

In September 1944 Mr. Bogtstra did not refuse to give me a commission; he wanted me to ask Mr. de Wildt. The question of resignation did not come up at that time because my time was full up with the Civil Defence Commissioner's transactions. In respect of the Civil Defence Commissioner's matter I did everything. I attended to the entire transaction. Mr. Bogtstra did not tell me that I could resign if I wanted to.

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I think Mr. Bogtstra went to India in August. I think he went in the latter part of August because I was away during June and August because my wife was ill. I sent a telegram asking for extension of leave. At that time Mr. Bogtstra did not send me D3. On receipt of that letter my proctor wrote D1.

I told my proctor the facts of the case. I told him I was entitled to 1/8th share of the profits. I do not know that he did not claim 1/8th share of the profits. I knew what I was entitled to and my basis of calculation was 1/8th. I told my proctor all the facts. I told him that I was entitled to 1/8th share and I also told him that I did not know the exact figures of profits for that year.

(Letter of 15-12-44 marked D4). In reply to this letter my proctor wrote D2.

Most of this business was done during the war years, 1941/43. Any goods that came in could be easily sold. The difficulty was in getting import permits. The dealers had to get the import permits and I had to assist the dealers in getting them. Mr. Bogtstra did not do this work and I was not merely a clerk. I represented the firm of Bogtstra & de Wildt. Mr. Bogtstra and Mr. de Wildt were in Ceylon. The import permits were got not only by the firm. There were instances where dealers got the permits. We had to contact such parties who were entitled to permits. Any goods got down by Messrs. Bogtstra & de Wildt could be easily sold. But we could not get the goods because we did not have licences of our own. We had to arrange for import licences for the dealers. The dealer was having the licence. I had to find out who had licences and get them. It was a tedious job, getting exchange permits etc. Everything was arranged by me. I did all the work.

That was the only way by which business could be brought in. Goods that came to the firm were indented by other parties. Letters of Credit were the only things we opened. I could have done all this business on my own account. The documents were in Mr. Bogtstra's charge because Letters of Credit were opened by the firm. I did all the spade work for which I was paid. The other employees also did spade work. They did not claim 1/8th share of the profits because they did not do the same amount of work as I did.

Whatever goods came were previously sold and indented. I arranged the sale, got prices, studied the competition and the margin of profit. I sold without disclosing to the sellers the margin of profit. That was the duty of every member of the firm. Most people did not understand the implications of import licences. It was in that year that Messrs. Bogtstra

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& de Wildt came into prominence, because we knew how to do the work. Mr. Bogtstra was in the office giving me moral assistance and asking me to carry on. If it was my firm I would have carried on as I liked.

I now have a firm in Madras. I am not trying to deal with the people Mr. Bogtstra had in India. I introduced them to him. I import piece goods from them.

I know Hanna & Co. I wrote a letter to them on 30-6-46, in which I set out my connexion with Messrs. Bogtstra & de Wildt. I told them I was working for this firm. In my letter I explained to them that I was working there until 1944. 10

I have a contract with the Government of India for the supply of millet. Our concern is the only one in Madras which supplies to the Government of India. I am dealing with almost everyone with whom Messrs. Bogtstra & de Wildt deal. They have supported me because I have done good business with them.

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Re-examination :

The dealers had to obtain import licences to import all varieties of goods during the war years. Import licences would be granted on the basis of goods imported during certain standard years. Traders who had not dealt in that line of work would not be given licences. Messrs. Bogtstra 20 & de Wildt dealt in certain lines of goods, during the standard years. I had to find out from the Import Control Office those people who were entitled to import licences based on passed imports, contact them and ask them to send an application for the licence. After enabling them to get the licence I asked them to place the indent with the firm which I arranged for and on behalf of the firm.

For and on behalf of the firm of Bogtstra & de Wildt I arranged with the foreign traders to supply the goods. I got indents from local dealers. One of the conditions in the indent is that the dealer must provide the licence. In case the dealer does not give the licence as arranged he will be 30 held responsible for damages. Bogtstra & de Wildt could not at that time do that without me. When the goods arrive we are informed by the bank. Several consignments may come in one shipment. We recover the money from the dealers and give them the documents. Bills are made on the basis of price on the indents. We make a profit on a basis depending entirely on the market. We mostly dealt with people who sold in the open market. Anybody could have dealt with them. I do not disclose the commission on the bill because the dealer would not pay if he knew the margin of profit. We only send an invoice. Commission is disclosed because 40 commission is standardised at 3, 5 or 12½ per cent. Profit is the difference between outright Cost Insurance and Freight cost and Cost Insurance and Freight selling price.

In all the transactions I had put through I had in no instance to handle the goods. Therefore I called it a commission. I have been asking actually

for commission at one stage and 1/8th share of the profits at another stage. There is no distinction between them.

The Diyatalawa firm accounts were audited in Colombo. I closed that firm because the ground lease was held by me and the former owner of the superstructure jointly and later on the other man demanded Rs. 12,000 for the superstructure which I was not prepared to pay. Mr. Bogtstra also was not agreeable to this. He said that if I cannot have a place for myself I must close it up.

I worked at times from 8 or 8-30 a.m. until 12 or 12-30 p.m. for Messrs. Bogtstra & de Wildt. Pettah business is done mostly at night when they are free; that is usually at 7-30 or 8 in the evening. I had to go and meet them and persuade them. I had to interview the Controller of Imports also. Mr. Jones knew me fairly well because I brought to his notice an instance of dollar exchange going through the back door to England. He consulted me on any knotty problem.

I have made a record of the work I have done. I have brought it with me. This is a record of all purchases made and prices at which they were purchased and the prices at which they were sold. I have copied the indents which I kept for my own reference. It is in a notebook which I carried with me in the Pettah. I have an exercise book in which I have noted these particulars. I have all the note books in court.

By exposure in that letter I meant that we never disclosed the margin of profit we had. Nobody in the office knew the margin of profit we made with the exception of Mr. Bogtstra and I.

Mr. Bogtstra went to India in connection with the sale of umbrella cloth. It was sold to Nagjee Puruchotin & Co. umbrella manufacturers, Calicut. He sent me a wire to meet him at Trichinopoly station. Full payment was drawn up by two cheques. He got two cheques made out. I saw those cheques because I had to go along with him to arrange the sale. He did not know the language of the people. At Madras I was short of cash; I wanted an advance of Rs. 100. He came to Colombo and I returned about a month later. Later I saw that only one cheque had gone into the account of the firm; the other had not.

Again there was a consignment of old newspapers. There was no licence available; one was to be arranged. The margin of profit was Rs. 2,100 on the licence. That amount was to be shared among Mr. Bogtstra, Mr. de Wildt and myself. I do not know whether Mr. de Wildt received his share. Another instance I had a licence in the name of the firm for watches. No imports were made. The licence was sold to a particular firm in Colombo. But the money was never entered in the firm's books.

Victoria is working under me from March this year.

Sgd. S. C. SWAN,  
District Judge.

No. 5  
Plaintiff's  
Evidence  
L. G. X.  
Victoria  
Examina-  
tion  
—continued

L. G. X. VICTORIA. Sworn. Bookkeeper under plaintiff.

I joined the firm of Bogtstra & De Wildt in June 1930. The bookkeeper at that time was Mr. Vanderstraaten. I became bookkeeper in 1941. I was in charge of their books. They maintained a cash book, sales book and ledgers. In the cash book entries are made for all cash coming in and going out, then and there. They are posted into the ledgers subsequently.

I remember the time plaintiff worked at Bogtstra & De Wildt. On 4-1-41 plaintiff was paid Rs. 2500/- by cheque. I know that. I was the bookkeeper at the time. (Shown page 4 of P10) The entry against the date 4th January 1941 is in my handwriting. It reads: "By account M. A. Sathar, Advance against commission, Cheque No. 5410 amount Rs. 2500, voucher No. 870". There is a voucher for it. The voucher will be in the voucher file. The voucher file will clearly show for what this amount has been paid. That should be with Messrs. Bogtstra & De Wildt.

(Shown counterfoil of cheque P2) This is the cheque relating to Rs. 2,500. This is in Mr. De Wildt's handwriting. The entry in the cash book P10 is made from this counterfoil. All cheques issued carry particulars in the counterfoil. Cash payments are entered in the petty cash book. There is a relative entry in the ledger under the date 4-1-41. 20

(Shown P4) This is what is called the Personal Ledger. Salaries of employees of the firm are entered in the General Ledger. The bonuses paid in December are entered in the salaries A/c of the General Ledger. That is not entered in the Personal Lcdger. In the Personal Ledger there are only the personal accounts of different individuals. Partners also have folios in the Personal Ledger. Mr. De Wildt and Mr. Bogtstra have folios in this ledger. The Capital A/c would be in the General Ledger.

(Shown page 112) There is an entry in P4 corresponding to the entry in P10. It is under the plaintiff's account. There is a folio for the plaintiff. In regard to the payment of Rs. 2,500/- there was a receipt made out. Mr. Sathar would have given a receipt. As a rule receipts are obtained for all payments made. Under date 14-7-41 at page 39 in P10 there is an entry "By A/c M. A. Sathar in settlement of commission, Cheque No. 6265, Voucher No. 278 Rs. 2399/53". This is in my handwriting. One Mr. Mohideen was also working here. This was the book that was kept in the regular course of business.

(Shown P7 counterfoil of cheque) This is in my handwriting. That reads: "Cheque in favour of M. A. Sathar in settlement of his commission A/c Personal". That is we will have to debit Sathar's personal A/c. Before the Rs. 2399/53 was given Mr. Bogtstra asked me to give a statement of account to the plaintiff. I did so. That statement was made out from the Personal Ledger. Under date 14-7-41 in the Personal Ledger (page 79 of P5) there is an entry reading: "Cash in settlement of com-

mission" in the handwriting of Mr. Mohideen. Mohideen is now not working under them. He is not working under the plaintiff.

No. 5  
Plaintiff's  
Evidence  
L. G. X.  
Victoria  
Examina-  
tion  
—continued

In the counterfoil P7 I have written "In settlement of his commission". I wrote like that because Mr. Bogtstra would have told me to write like that. I used to get counterfoils signed by Mr. Bogtstra or Mr. De Wildt. If I did not know the particulars I asked them. When I make the cheque I write the particulars here, then Mr. Bogtstra or Mr. De Wildt would sign the cheque and also initial the counterfoil. Mr. Bogtstra has initialled P7.

(Shown P2) This is initialled by Mr. De Wildt. He himself wrote the cheque and signed it. The other cheque was signed by Mr. Bogtstra.

I used to write the cheque on instructions. I cannot on my own write a cheque to anybody.

On 20-12-41 a sum of Rs. 500 was paid.

(Shown page 79 of P5) The relevant entry is in my handwriting. It was paid by cheque. There was a relevant voucher I could give the number of the voucher from the cash book. The number of the voucher appearing on page 68 is 818. In the voucher all particulars in respect of the payment are entered. That is the purpose of the voucher. The person who receives the cheque also signs the voucher. The voucher is first signed by Mr. Bogtstra or Mr. de Wildt; after that the cheque is made out. The person who receives the cheque also signs the voucher. I make out the receipt and Mr. Bogtstra or Mr. De Wildt signs it. The person who receives the cheque also signs the voucher. For the payment of Rs. 2,500/- I can tell from the book that I obtained the receipt. Whenever I get a receipt I tick it off with blue pencil and pass it to the file. For the entry under date 4-1-41 in the cash book I have obtained a receipt. For the entry of 14th July also I have obtained a receipt. For the sum of Rs. 500 paid on the 20th December also I have obtained a receipt. The voucher and receipt will clearly show the purpose for which the payment was made.

Q. Did Mr. Bogtstra ask you to give plaintiff a statement of profits of the Sundries Department? He asked me once. I gave it to plaintiff.

(Shown P8) This is in my handwriting. I gave it to Mr. Bogtstra. I got the figures from the balance sheet. The balance sheet was prepared by Pope & Co. The balance sheets are all filed. That balance sheet will show the profits that have been made for the various departments. Mr. Bogtstra asked me for a statement and I gave it to him.

Rs. 8,300 is the profit on Sundries account. I got the figure from the balance sheet. The 3rd item Rs. 11,268 is also on Sundries account. I took this also from the balance sheet. The figure on account of sugar in 1942 is correct. The figure for 1942/43 is also correct. These figures were obtained by me from the balance sheet and they tally.

I remember a sum of Rs. 8,500 paid to plaintiff by the firm. By looking at the Personal ledger I can say that the payment was made on

No. 5  
Plaintiff's  
Evidence  
L. G. X.  
Victoria  
Examina-  
tion  
—continued

30-10-43. The relevant entry in the cash book (shown page 53 of P11) is under the date 30-10-43. It is in my handwriting. Payment was made by cheque. The cheque number is given. There is a reference to a voucher. The number is 375. I obtained a receipt for it. The voucher and receipt will clearly show the details for which the payment was made. This payment was made for "Balance of commission". There is a relevant entry in the ledger under date 30-10-43 reading "In settlement of commission Rs. 8,500". I cannot remember now who made out the cheque. I may have made them. I am not sure.

I left defendant's firm at the end of February 1947. I lost my brother and I wanted to go to India. My brother died in Colombo. There I joined the plaintiff's firm in April this year. While I was working at Bogtstra & De Wildt's I received summons in October last year to give evidence in this case.

XXD. Nil.

Sgd. S. C. SWAN,  
*District Judge.*

Mr. Hayley closes his case reading in evidence P1 to P11.

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**No. 6**

**Defendant's Evidence**

20

No. 6  
Defendant's  
Evidence  
W. L.  
Bogtstra  
Examina-  
tion

Mr. Wickremenayake calls:—

W. L. BOGTSTRA. Sworn.

I am a partner of the firm of Bogtstra & De Wildt. As a firm we started business in 1937. Mr. De Wildt and I were managers of the Holland Ceylon Commercial Co. That firm was liquidated in 1933. We took over the business and became successors and started the firm of Bogtstra & De Wildt. I came to Ceylon in 1922; De Wildt came in 1917. I have been in Ceylon doing business from that time. I am familiar with the country. In the course of my business I have come in contact with a large number of Pettah traders. My business is that of import, indent and sell-<sup>30</sup>ing from stock. The business has a textile Department, Sundries and Drug Department. My duty is that of managing the business. Mr. De Wildt was manager of the Drug Department which was a separate department and he supervised its administration. There is no Department called the General Import Department.

I arrange imports with the assistance of the clerks and salesmen. I have a large number of customers abroad. I indent goods from them. Those goods when they come would be sold in Ceylon. Offers from outside, if favourable, would be accepted and when goods are received they are stocked. We buy from importers and sell locally or we might indent for local<sup>40</sup> dealers.

We employ canvassers to go about. They have got to go out into the bazaar and canvas orders. If we have stocks they have to sell the stocks, or they have to get indents. They have to keep in touch generally with everything in the business. They are supervised by me. I arrange the banking affairs of the business.

No. 6  
Defendant's  
Evidence  
W. L.  
Bogtstra  
Examina-  
tion  
—continued

In the course of my business from 1922 I have come into contact with a large clientele both outside and inside Ceylon.

I know the plaintiff. I first came to know him somewhere in 1935 or 1936 at Diyatalawa, when he was in the firm of K. Ibrahim Saibo. I employed him in 1937 on a salary of Rs. 150. His duties were canvassing and selling. He had to do the usual routine of an import business. I heard his evidence. He said he was in charge of the General Import Department. I am in charge of the whole business. He assisted him. I did not assist him to carry on the business.

If a telegram came I told Sathar to go into the Pettah and see what he could do. Before the war I had a number of vans in charge of a Dutch boy. Sathar sometimes went with him and acted if the other man was away elsewhere or ill. He did not go often.

Sathar opened a business at Diyatalawa and I helped him with the business. He told me he had to support 2 or 3 brothers in Madras. He wanted to get one brother a job. He tried Walkers. Then there was an opportunity of opening a business. He started the business and put his brother in charge. I advanced him the money and he ran the business. I was to get half share of the profit. His brother was in charge and Sathar supervised the business. I asked for accounts but could not get any accounts. I was told there was a loss of Rs. 2,000 but still I could not get accounts. The war came and the business must have improved. I again asked for accounts but none were submitted. I got annoyed and I send Mr. Pope to make a balance sheet and check the business. When I knew everything I gave instructions to close the business. The proceeds were divided and I was paid my share.

I sent a return of my profits to the Income Tax Authorities. Pope told me that the business was not carried on according to my instructions.

I employed Sathar in my business in Colombe on a salary of Rs. 150. He told me, I believe, that he received a salary of Rs. 40 at that time and everything found. He did not tell me that he got a share of the profits. He once told me he had money difficulties.

From July 1937 to June 1940 he was paid Rs. 150 a month. I also paid him a Christmas bonus. I paid all employees bonuses. That amounted to a month's salary; sometimes to  $\frac{1}{2}$  month's salary. They always got something. Sathar was satisfied with that. I never had any complaint. In July 1940 I reduced the salaries of all employees by 10%. Business was bad and war had broken out. I did not know what the future held. I had to reduce expenses. I promised to restore the cut when things improved. I gave him a Christmas bonus that year also. In January 1941



No. 6  
Defendant's  
Evidence  
W. L.  
Bogtstra  
Examina-  
tion  
—continued

I restored his salary to Rs. 150. It may be that in 1941 I paid him Rs. 5,000. I paid it to him as a gift. He had been working hard and I felt that he was entitled to a bonus.

He did his job and sometimes we worked up to 12 at night. We appreciated the hard work which he did at that time. That is why he got this handsome bonus. He said that as a result of his efforts I got a lot of business. I had my connexions which I had built up for years and years. I had goods. And we might have made new connexions. If the dealers got an import permit the work was easy. If we had goods to offer everybody ran after us.

10

I did not suggest that he was to receive 1/8th share of the profits. This is the first time I heard of it. There was never a talk of his receiving 1/8th share of the profits. He always received his bonus. If it was agreed there would have been a written agreement or something of that sort. We made large profits at that time. 1/8th share of the profits would be a large sum. I could have got a man from Europe to do the work. The whole staff received bonuses of 3 months' salary or 6 months' salary. I paid Miss Wickremetilleke Rs. 750/-. Whenever there were large profits I paid big bonuses. These people assisted us. I paid Miss Wickremetilleke a salary of Rs. 60. I do not know what salary Victoria received. I paid him a bonus of Rs. 600. He may have received a salary of Rs. 100. I gave bonuses to practically every member of the staff ranging from 2, 3 to 6 months' salary. That year was a particularly good one.

I paid him Rs. 5,000 in 1942 and in 1943 Rs. 4,000. I may have made similar payments to the other employees.

The books were kept by the bookkeeper. The bookkeeper at the time was Victoria. Whenever there was a payment to be made I or Mr. De Wildt instructed him to make the entry. He made the voucher. Then the cheque was made out. If it was correct I pass it off—sign the voucher and the cheque. I used to scrutinise the particulars, but sometimes we have so much to do we pass it off provided the voucher and the cheque contained the correct figures. We trusted these people who had been long in my service. I heard the plaintiff's evidence in regard to this first payment. I did not sit down and go through the books. We do not do that. When he had an idea of paying bonuses Mr. De Wildt and I discussed it and made the payment. We never went so far as to go into accounts with him.

(Shown P6.) This is in my handwriting. I might have asked the bookkeeper or Mr. De Wildt to look into the particulars. The bonus would depend on my profits. This payment might have been for some other purpose. I have written no particulars here. I have taken figures probably from the balance sheet. It is in my handwriting. This was not made for the purpose of finding out the 1/8th share. It is for office purposes. Sometimes I want particulars from the bookkeeper. This must have been in the file for the information of the accountant. I do not know why that is in

the file. I never gave this document to the plaintiff. I did not tell him that Rs. 17,000 should be deducted for expenses. If that is so it would have been stated there. His getting a bonus or not depended on profits. I had no reason to give him profits.

No. 6  
Defendant's  
Evidence  
W. L.  
Bogtstra  
Examina-  
tion  
—continued

(Shown P5.) This is entered by a clerk. There is a reference here to commission on one side and on the other side it refers to bonus. I never agreed to pay Sathar commission.

He left the firm because he could not get commission. It is correctly entered there as bonus. Sathar had been in the habit of drawing from the firm advance sums of money which were debited to his account. He has drawn some money in January. (Shown page 112 of P4.) On January 4, 1941 there is an entry "Advance against commission Rs. 2,500". He must have asked for a loan on advance. I think he knew at this time that he was going to get a bonus. I might have had the idea of a bonus in my mind when I gave the loan. I do not remember details now. I had a rough idea of profits made and if I was going to give him a bonus I must have known how much. He must have asked for an advance and I allowed him Rs. 2,500. Thereafter he was paid the balance. Plaintiff said that the following year no payment was made. In 1943 he got Rs. 5,000 and Rs. 4,000 in the other year. We made fairly large profits. That is the time goods were coming from America. I paid my other clerks also similar bonuses. These years all got bonuses. That in 1943 also he sat down with me and went into accounts is untrue. There was no necessity for me to go into accounts with him. There was no necessity for me to give him an explanation. Nobody handled the books except Victoria, my bookkeeper at the time. I know that he is now employed under the plaintiff. I heard plaintiff say that in 1943 there was a nett profit of Rs. 146,000 and that I said that Rs. 75,000 should be deducted for Income Tax, Excess Profit Duty etc. I might have given him an idea of the situation when he spoke to me about his bonus. I did not offer an explanation. Actually my profits for 1941/42 were Rs. 111,000 and for 1943/44 Rs. 77,567. Towards the end of 1943 plaintiff saw me about his salary. He got a bonus. He said his family was increasing. Every year there came a child. He was living in a house at Union Place. His salary was insufficient which I fully realised. The cost of living had gone up considerably. He said that he had no security in this firm; he said a bonus was no security and asked for a commission. I thought over matters and offered him a salary of Rs. 400. He asked me to make it Rs. 500 which I agreed without any bonus. That was without a dearness allowance. The plaintiff was really hardworking; the most hard-working man I ever had. That is why I gave him this bonus.

His business was going about the Pettah and canvassing orders and collecting indents. That could have been done by any other intelligent man. Plaintiff had no special qualification for this work. He was good, ambitious and hardworking. I had no complaint about his work. I was satisfied.

No. 6  
 Defendant's  
 Evidence  
 W. L.  
 Bogtstra  
 Examination  
 —continued

At the time he says I suggested that he should take 1/8th of the profits business might have started to increase on account of the war. Business increased in 1940/41. Business depended mostly on what outside countries had to offer. Indents became more and more difficult.

I do not know of any connexions that plaintiff had outside Ceylon. His work was outside the office. Sometimes he helped me when there was no staff left in decoding telegrams. We waited together at night. He had to send telegrams so he assisted me. I had to send letters to a large number of persons outside. I did the correspondence. I got the particulars from him. Sometimes he made a draft. But the correspondence was 10 entirely in my hand. I do not know of his having contacted any people outside. We built up the connexions of this business for years and years. I got connexions through the banks. People wrote to the banks for connexions and the information was passed on to me by the bank. I got connexions when I was home on leave.

When goods became scarce Government started import and export control. Often a certain amount of goods were available to local dealers who had been doing business in these lines before and they received a certain quota for which they obtained an import licence. The dealer could 20 buy the goods mentioned on the licence. We got information from our connexions of goods available and we had to find people who wanted them in the Pettah. It was the plaintiff's business to contact these people and order the goods. Sometimes we got offers for goods for which the dealers had no licences. It was his duty to find out whether we could get the licence for the dealer. That was plaintiff's business and I paid him for it.

I was not here at the time of the trouble with the Civil Defence Commissioner. I cannot give an explanation for that. When the case came up before the tribunal I was not here. It may be that the trouble was about commission; I do not know.

In 1943 plaintiff discussed his salary with me. He was a married man. 30 I was aware of this. He had children. He told me that he had to support his other relations. He said his salary was insufficient and that the bonus was no security, that it might not be paid to him. Then I agreed to pay him Rs. 400. He said make it Rs. 500 and I agreed. We did not even talk about a bonus. This increase in salary was to take effect from January 1944. He was paid his salary from that month as far as I know. It may be that he did not receive his salary in March. I do not know. He was in the habit of going on leave to India frequently and sending me telegrams that his wife was ill or that he was ill. I cannot say whether this was one of those occasions. I do not know the reason why his salary for 40 March was not paid. I have a receipt for January and February for Rs. 1,000. Thereafter from January 1944 he came somewhere in August or September and spoke about his salary. Up to that time everything was happy and peaceful. He did his work, the same sort of work as he was doing. Then he came in September or August, I do not remember, and said that he wanted a commission on top of his salary. He did not tell me

what commission he wanted. He wanted a commission on sales. He did not tell me what percentage. I flatly refused. He said he would resign and I accepted his resignation at the end of the year. Then he went back to his work and did it as usual. That was somewhere in August or September. Then I went on a business visit to Bombay. I returned 3 or 4 months later. Plaintiff was carrying on as usual. I did not get the impression that he would leave. So I reminded him that he wanted to resign. He said that stands and went back to his seat. At the end of November I wrote to him the usual letter telling him that the resignation stands. On 10 29th November 1944 I wrote him D3. I told him that he could resign as from the end of the year. To that he replied by his letter of 4th December 1944. I think he stayed on until the Christmas holidays. On 4th December 1944 his proctor wrote to me in reply to my letter of the 29th November 1944.

I had no conversation with him regarding his dues. Rs. 500 was due him for December which he did not accept. Up to that time I had paid him his salary every month. That was all that was due to him. There was no question of any other dues. It was not a condition of service that an annual bonus should be paid. Bonus depended on the business and on 20 the efforts of the men. I have sometimes reduced the bonus by half and nobody complained. I did not agree upon any basis for commission.

Sathar was a very long time in India. I sent him to Bangalore to tender for coffee. He stayed there a long time. Very probably he went home and stayed there may be 8 months. The coffee business was not a very great success. That was not his fault. I did not make a worthwhile profit on coffee but I do not blame him for it. It was due to the control. His visit to India did not result in my getting a substantial profit.

All my employees contributed to my profits. Everybody pulled his weight. All firms in Colombo made profits. They could not do anything 30 else.

I replied to this letter by through my proctor Mr. Sivasubramaniam. His salary for December has been deposited in Court. They replied to D4 by D2.

The profits in these years were abnormally high but nobody could help it. I made profits in spite of myself. Today it is difficult. This letter contains a threat to expose me. I heard the plaintiff give evidence about the various matters.

(Further hearing tomorrow)

Sgd. S. C. SWAN,  
*District Judge.*

40

29-5-47.

Appearances as before.

Errors in previous day's proceedings corrected.

W. L. BOGTSTRA recalled, sworn.

Examination in Chief continued

No. 6  
Defendant's  
Evidence  
W. L.  
Bogtstra  
Exami-  
nation  
—continued

No. 6  
 Defendant's  
 Evidence  
 W. L.  
 Bogtstra  
 Examination  
 —continued

I have known De Wildt since 1932. I have been in partnership with him since 1933. Our relations have been very cordial. He has retired from the firm but he is in my office doing responsible work.

There was no discussion, to my knowledge, that Mr. De Wildt was to get Rs. 12,000. I did not discuss it with the plaintiff.

In his evidence plaintiff referred to the sale of Umbrella cloth in India in December 1942. The firm I dealt with was Najee Urusshotam & Co. That account appears in P5 at page 135. On 16th December I have debited the firm with Rs. 25,789/20. I remember that I received two cheques for the whole amount of Rs. 36,000 odd. I credited on 17th 10 December a sum of Rs. 25,000 odd. The other cheque was debited on 31st March 1943 as a difference in the bill of Rs. 10,522/75. The suggestion that I had appropriated the 2nd cheque was made. That debit was made in April and a cheque was paid on 14th February 1944 so that the whole of the amount I received from this firm has gone into the accounts. The delay in crediting the Rs. 10,000 odd was that we needed some money for private purposes and we took it as a private allowance. It was credited before March so that it may appear in the Income Tax return. I think we used the money to purchase some shares and paid it back. 20

So far I have not received a commission of Rs. 1,200 which I divided with the plaintiff.

I was approached, in the early stages when permits were issued, with an offer to sell a licence. That was a common practice. It was quite legal. I do not say that I did not sell a permit, but I cannot find an entry in any of the books.

My General ledger contains the salaries account. The point was made that plaintiff's account appears in the personal ledger and therefore the payments made were not bonuses but shares of the profits. If any clerks borrow money an account is opened for him in the personal ledger. Even 30 the store coolies get their relief. The moment they get an advance an account is opened for them in the personal ledger. That is the usual practice. I have opened an account in the Personal ledger for the plaintiff because he borrowed some money and bought some clothes. That was long before the question of profit arose.

(Shown P8.) I have seen this before.

(Shown D5.) Plaintiff's case is that we looked into accounts and agreed to pay him Rs. 5,000. As a matter of fact D5 shows that on 31-3-41 Rs. 5,000 was entered in the journal on 31-3-41 and similarly for the subsequent years. Bonuses were entered at the end of each year. 40 There was no question of looking into accounts together. I never looked into the accounts of the business with the staff.

Cross-examined: In January 1940 I cannot say how many employees I had in the firm. I could not say exactly how many employees I had in 1941. There were myself and Mr. De Wildt; there was Karalasingham, the piece goods broker. He got a small salary of about Rs. 150 and commission on sales. The commission was paid according to a sale. Sometimes he got 1/8th of the profits which amounted to 3/8% or 1/2%. Sometimes he got 8%. I had no contract with him. The commission was paid to him every month. Some months he made Rs. 300; 1940 was not a good year for piece goods so he must have made less. I am not sure about these 10 figures. The commission for 1940 may have been Rs. 2,000 or less for the year. The commission was paid monthly.

No. 6  
Defendant's  
Evidence  
W. L.  
Bogtstra  
Cross-exa-  
mination

Miss Wickremesinghe was my typist. I think she got a salary of about Rs. 150 or Rs. 160 a month. Victoria was the bookkeeper. He got about Rs. 100; may be Rs. 80 or Rs. 100. There was another typist; another book keeper. Mohideen was there. The other typist joined at about the same time as Miss Wickremesinghe and received about the same salary. There were the store coolies. There were Suppramaniam and Peris.

Sathar did not imitate the other clerks. He was salesman and canvasser. Karalasingham was the piece goods broker and canvasser. I 20 cannot remember what other clerks I had. My employees including peons numbered about 10. I cannot remember the number. It may be more or less. I cannot be exact.

The Christmas bonus was paid to all employees. As a rule they got a month's salary in December. Sometimes they received half a month's salary, sometimes more. The bonus depended on results. If business was not good they got half month's salary. At the end of the year it was decided how much should be paid as bonus. I discussed the question of the bonus with De Wildt. This was done usually in December, before Christmas. When the bonuses were paid I think it was entered in the salaries 30 book. I have the salaries book in Court.

(Mr. Hayley marks the salaries book P12 which shows the Christmas bonus for 1941)

This is the book which shows the Christmas bonus. It gives the names of the whole staff except myself and De Wildt. These payments were all made in cash. Mr. Sathar also got the usual Christmas bonus. The total in bonuses in 1940 came to Rs. 852/- to 16 persons. The receipt of the bonus was initialled on the book.

In January 1941 Mr. Sathar got Rs. 2,500. That was paid to him as a loan. He asked for an advance. Loans are not entered in P12; they are 40 entered in the Personal Ledger P4 at page 112. The entry there reads "Advance against Commission". That is a mistake. It should be "Advance against bonus".

No. 6  
Defendant's  
Evidence  
W. L.  
Bogtstra  
Cross-exami-  
nation  
—continued

I said in evidence in chief that Mr. Sathar's position in the firm was just the same as that of any other clerk. This advance was paid against a bonus which Mr. De Wildt and I had more or less decided to give him at the end of the financial year. That would be 31st March. I had most probably decided to give this bonus to all the staff. It was a bonus for the year ended 31st March. Mr. De Wildt and I decided that all the staff should get a further bonus over the results of the financial year; that is shortly after accounts were made up. That is, that all the people mentioned in page X of P12 would probably get a further bonus after March 1941.

I and Mr. De Wildt carried on this business. I have to submit Income tax returns. It is an exact business like every other business carried on.

I think that Mr. De Wildt and I had decided by 4th January 1941 to pay all the persons mentioned on page X of P12 an extra bonus after March 1941. Very probably they got the bonus; I could not say.

Q. How many months' salary were they to get as bonus?

A. There have been years in which they got six months. In 1941 I think it was 2 or 3 months' salary bonus; may be more or less I cannot say.

Q. Was there any reason why any of them should get proportionately less than Sathar?

A. Yes. Sathar was a man working very hard. He put more effort than any other member of the staff. He and I sometimes worked until 12 or 1 in the morning and on Sundays. We thought we should compensate this man in a way better than the others; he was a canvasser who put in a lot of work which was highly appreciated by the firm.

Q. Are you quite sure that you and Mr. De Wildt decided before January 1941 to give him Rs. 5,000?

A. Not exactly Rs. 5,000. I had made up my mind that the profits of the business were such that we could give this man a more substantial bonus, of a figure not mentioned. I did not tell Sathar; he did not know.

Q. In January 1941 when he suddenly demanded about 20 times his salary he did not know that you were going to give him this bonus?

A. He did not know how much bonus he was to get.

The entry in P4 'Advance against commission' was written by the bookkeeper for which I scolded him. It was passed on to the bookkeeper from the cheque book. The cheque book is in Mr. De Wildt's handwriting. According to me no question arose regarding commission to Sathar. He left because he could not get it. Mr. De Wildt was not insane in January 1941. 4th January was a holiday. De Wildt or I do not usually write the body of a firm's cheque. This is an exception. As regards myself I do not think I have ever written the body of a firm's cheque. In all probability the clerk and the bookkeeper were not there on 4th January. I was not there. Sathar must have gone to De Wildt and

asked him for a loan. This was told me by Mr. De Wildt also. There was nobody in the office. Mr. De Wildt remembered our talk about the profits of the business and the agreement in principle to pay the staff the bonus wrote the cheque in his own handwriting and entered it up as commission. He did that by mistake. Mr. De Wildt does not drink at all. He was not intoxicated. I do not think the mistake extraordinary.

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*Q.* Do you not think it was a very extraordinary mistake for a businessman to write commission to an ordinary clerk who was not entitled to commission? I do not think so.

10 I know that all clerks get their share at the end of March. I do not know in what book that would be entered.

Before I came to defend this action I did not try to find out in what book it would be entered. I have come to give an explanation of the payment of Rs. 5,000 to Mr. Sathar. I have all the necessary books in Court. I think the payment of Rs. 2,500 to Mr. Sathar is debited in his account in the Personal Ledger. I do not think accounts of all the persons mentioned in P12 will be found in the Personal Ledger. All the clerks including Sathar received cash and they signed it there. The payments in the Personal Accounts are by cheque. None of the payments on page X of  
20 P12 will appear in the Personal Account. All these are Cash Payments and will be in the Cash Book. A cash cheque is drawn up, cashed and the cash paid to the staff.

*Q.* After March the payments of bonus would have gone into the Personal Ledger?

*A.* Not in the Personal Ledger; it is a Cash Payment. They get it in cash. It would be in the salaries account.

*Q.* Can you show any other page of P12 which shows that any of those clerks were paid any bonus after March?

*A.* I do not think it is in this book.

30 I do not know why. It is not an ordinary bonus. I cannot explain why. I do not know. I understand accounts to some extent. I am not a bookkeeper. I do not know the books of the business. I cannot say whether cash payments to clerks go into P12.

*Q.* I take it that you, Mr. Wilson and your bookkeeper went into all the accounts before coming into Court?

*A.* Perhaps not all of them. I must have shown Mr. Wilson the books of account.

I do not recall showing him the entry of any payment to the clerks after January 1941. Page Y of P12 contains the Christmas bonus for  
40 1942.



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*Q.* Is there any entry in that book showing bonuses paid between December 1941 and December 1942?

*A.* It must be somewhere, because I am under the impression that the staff got a bonus over the sales of the year ended 31st March 1941. I do not know where the books are, but I am under the impression that the payment was made.

The payment of Rs. 2,500 to Sathar was the same as that to anybody else. If Miss Wickremesinghe asked for Rs. 2,500 she would not have got it; Mr. Karalasingham sure would have got this amount, but he did not ask for it. He was with me for 20 or 25 years. I am quite sure that the Rs. 2,500 was part of the bonus which was not decided yet; that is apart from the Christmas bonus. This was a bonus in appreciation of his extra work. When the others were paid in March Sathar had already got an advance from De Wildt. The Rs. 2,500 was a loan but by mistake it is stated as commission. Mr De Wildt knew from our talk a week before that we were going to give a bonus and he had no objection to giving Sathar the advance, but by mistake he wrote "advance".

*Q.* If he had been paid anything else against this bonus it would be shown in his account?

*A.* Yes, if he took an advance. There was no reason to pay him anything else. I did not pay him anything else. He got his salary and the advance. If we paid him any further sum I do not know whether it would go into this account. That is not my part of the business. I do not know whether he was paid. He was paid Rs. 5,000.

I do not know that he was paid a small bonus in March. I have come to give evidence about the whole case, but I do not know all the particulars by heart.

(Shown page Z of P12). I do not know that a small extra bonus was paid to the whole staff on 20th March 1942. That cannot be. That is a private affair of Mr. De Wildt. Like everybody else he was paid Rs. 125. All were paid a bonus of a month's salary. It is not entered there because probably it was a cash payment. That bonus was paid to celebrate Mr. De Wildt's 25 years with the firm.

I cannot say off hand how many people had accounts in the Personal Ledger. The Store coolies, head kangany and the driver had accounts. Some other people also had accounts there. Sadiyan the cooly, Edwin the driver, De Wildt and I had accounts in the Personal Ledger. Everybody who took monies on loan had accounts. Karalasingham left years ago. If he was indebted to the firm or had taken money his name would be in the Personal Ledger.

I do not know who R.S. Perera was. He must have been an employec of the firm. There are heaps of accounts in that book. R. S. Perera is also mentioned in the salary book.

(Shown page 200 of D4). He got small advances against his salary. Bonus was paid in cash.

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(Shown P12). This shows at page X that there was a bonus paid in December 1941. It also shows that a bonus was paid in December 1942. Every year in December the bonus was paid. On page Z there is a payment of bonus on 20th March 1942.

Q. Is it or is it not the fact that if any bonus had been paid in 1941 that should appear in the same way in this book?

A. All Christmas bonuses have been entered in that book. If there was a bonus paid in 1942 it is entered in that book. Each year's Christmas bonus is entered in that book. If it is not there it is an omission.

Q. In August 1941 at Z2 is an extra bonus of a month's salary paid to the people including Mr. Sathar?

A. If it is there it is so. It was paid in cash.

In January 1941 I advanced him Rs. 2,500 against bonus. In August 1941 a bonus of Rs. 150 was allowed to him. It was not debited because it was unfortunately paid in cash.

The statement of Mr. De Wildt that it was paid as commission is a mistake of his. There was no question of commission or a share of the profits at all.

(Shown P5 at page 79). In July 1941 Sathar was paid a further amount of Rs. 2,399/53 in settlement of commission. That too was a mistake. The whole amount is a bonus. I made a row with the bookkeeper over that. I also admit I might have been negligent. It is a mistake on the part of the bookkeeper. It is an extraordinary mistake. I told him so myself. I cannot say whether Mr. De Wildt asked him to put it in like that. He gets the particulars either from De Wildt or myself. In this case I cannot say who gave it. I am also liable to make mistakes. I might have made this blunder.

Q. Two partners and a bookkeeper have all stated in the case of a certain employee that he is entitled to commission?

A. Yes. I say all three were mistakes. The mention of commission is a mistake.

Nobody drew my attention to this mistake.

I did not make a mistake in phraseology when I gave Victoria instructions to enter it up. If bonus is decided I say "enter bonus for Sathar" and he does so. Even if we said commission by accident we meant bonus. I think the bookkeeper made the mistake and we passed it. The bookkeeper gets instructions verbally. I never leave anything in writing as far as I can. Even if I did see it in writing I would have passed it. I am liable to make mistakes. In fact I passed it. It was corrected later on on the same page automatically. If he had continued to talk about com-

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mission I would have noticed the mistake. I repeated the mistake when I signed P6 as commission. It was also a mistake when I said that Rs. 2,399/- was in settlement of commission. I think it is entered from the personal ledger. Now I say it is bonus. I never said anything else. All the members of my staff got one month's bonus in December 1940. All members got another month's salary bonus in August 1940. Mr. Sathar alone was given 40 times his salary as bonus, but it is not worked out as so many months. If he objects he could pay it back.

I say he was an ordinary clerk. Plenty of other people could have done his work. 10

I say that my evidence is true.

Bonus means more or less gift; it depends on me. I say the Rs. 5,000 is a gift or a bonus. To my mind it is the same thing. I did not tell him in January 1941 that he was going to get this bonus. We did not even decide between us what it would be. It was at the end of the financial year that the exact amount was decided.

In October 1943 Sathar was paid Rs. 8,500. The payment is again entered in the personal ledger P11 for 1943 as commission.

My firm was not very rich. The Holland Ceylon Co. did not go insolvent. It was liquidated. It paid a dividend of 12%. It was 100% solvent. There was some difference between the shareholders and the directors and it was liquidated. The concern was not in difficulties, it was sound. It declared a dividend of 112%.

Rs. 5,000 was a substantial amount for Bogtstra & De Wildt. The payment in 1943 was bonus, but again everybody called it commission. That was a mistake. It is quite probable that there are other mistakes like that.

I do not go into the books. I have seen that in P11 the payment of October 30 is reported as cash in settlement of commission. I saw it before I came to court. There was no necessity for me to write Sathar informing him that there was a mistake in the accounts.

The bonuses were given to others also. Miss Wickremesinghe was also given a similar bonus. Each got so many months' salary. I could not tell you in which book the entry of that payment would appear. I have not looked it up. It is most probably in the Cash book.

(Adjourned for lunch).

Sgd. S. C. SWAN,  
*District Judge.*

(After lunch).

He was a good clerk and he was part of the time canvasser. All the business of the firm was conducted by me definitely. I had all my connections before he came. He did not have to take any responsibility as a partner would have to do. Plaintiff did not have to consult me in any matters. He went to India once in 1942. He was sent there to tender for coffee and not to buy and he also got a holiday out of it. I wanted to buy the coffee. Because he was attending to that work in the office I sent him. That was his job as salesman or canvasser in the office. He was sent to India for that particular business. I sent him to India to attend the Tender Board. We tendered for the coffee and it was shipped here. He had not to contact sellers he had to tender for the coffee to the tender board. He had to make that tender on my instructions. He would buy it from the coffee board. He had to place that tender in India. I could not do it by writing from here, the letter might have been late or something might happen. Anybody else might have done it. I did not send him as a general representative of the firm. He would be representing the firm for the time being while in India. I might send a man to New York tomorrow and he goes there as representing the firm.

I admit I trusted him and I could have trusted him with large sums of money. I had no reason not to trust him. I might trust him with even Rs. 50,000 or Rs. 20,000. I sent him the money he needed for the tender. That was the one thing he had to do and come back. I have not sent him to do any other business in India, none that I remember.

If he was sent to attend to any general business on behalf of the firm you would remember it? He did a little business. He had to do his duty to our satisfaction. He is a very hard worker. I have no recollection of his having done general business on behalf of the firm on that trip.

(Shown letter of 6-7-42 P13) (Mr. Wickremenayake objects on the ground that it is not listed.

I allow the document to go in because it is in cross-examination). This is my letter. I admit now that he was attending to there on my behalf in a large number of commodities.

Do you still admit that this is the kind of letter you would write to an ordinary clerk? Yes.

(Shown letter of 7-7 P14) This bears my signature. With regard to this letter too, it is the sort of letter I would write to a clerk, that is why he was paid an extra bonus more than the others. On 23-7-42 I wrote this letter I admit. It is signed by me. You relied on his opinion and advice for all the general work that was being done by me? He was at the spot. Every salesman has to get that type of information for his superiors.

You will admit that no partner of a firm will have more responsible work to do than he was doing? I would not say that.

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(Shown letter dated 4-8 P16) I called upon him in this letter to make an extensive report—that was part of his duties. All private dealers had to buy coffee from the board. It was divided among the dealers by the board. I got 50 tons from the board. I cannot say how the firm mentioned in that letter, the firm of Nadars, how they got their coffee direct from the board. This is not an extraordinary letter. I had directed him to do these things.

Your opinion is that a man who was doing all these things was just a clerk? Yes and because he did the work well he got an extra bonus.

I sent him telegrams too at the time.

10

(Shown telegram dated 16-8-42 P17). I sent him this telegram. On 18-8 I sent him the telegram P18.

(Shown telegram dated 25-8 P19). In this telegram I say I left the business he was to do there to his discretion. I had to do that because I was in Colombo and he was in India. That is ordinary business.

(Shown letter of 24-8. P20). This is my letter. I also directed him by this to do business in piece goods in India. That was also part of his business. He sent me addresses of persons who dealt in textiles. It was part of his duty to do that. He was being paid for the work he was doing for me. I did not mind getting extra connections through him. That is<sup>20</sup> business. This letter shows while in India he dealt with the Nemco Rubber Works, and in Shark oil, soap, piece goods and chemicals. With regard to these letters and telegrams you say he had to do all this business as a clerk? Yes, he did it. This letter refers to remittances to him of Rs. 41,000. I may have sent him even larger sums than that. It is a big responsibility I admit but he had to do his duty as anybody else.

On 25-8 I sent him this telegram P21. On the 29th I sent him telegram P22 addressed the plaintiff as representative of the firm. He was in India and he was there as my representative, but I had to guide him there. The position there might change every day and therefore I had to<sup>30</sup> leave it to his discretion.

(Shown letter dated 24-9 D23). This is my letter. In that I wrote to him regarding possible business in wheat flour, whole wheat and other food stuffs and piece goods and I suggest he should come down to Ceylon in order to talk over the matter with me. I had to guide him. At the time I could not do any more business in coffee and I had to find other lines.

On 5-10 I wrote P24 to him addressed to Tanjore. In that letter I contemplated his making a further trip to Delhi and Bombay on my behalf. I asked him to come and see me about it. On 8-10 I wrote P25 and in that I say it is essential that he should go to Delhi as soon as<sup>40</sup> possible, without coming to Ceylon as suggested in my previous letter. In November 1942 he dealt in cattle in India.

(Shown letter P26 of 21-1-42). This is my letter. In that letter I left it to him to tender for cattle at his discretion and to fix the profits. I left him that discretion because all depended on how much he tendered. I regarded what he had to do in these letters too as just doing his job. It was his job to do all that. I had educated him to do the work.

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I put it to you that the plaintiff had built up the business since he joined your firm from what it at that time was a small business? I built it. He was my pupil. During 1939 and 1943 I found out he was a good worker. A hard worker. He was a very hard worker. The other clerks were not like him. If I got ill I would not have considered he was the man to run the firm. I have been ill and when I was ill De Wildt was in charge.

(Shown telegram P29 dated 31-12-43). In December 1943 he may have gone on a holiday. He occasionally did that. I telegraphed to him to India that I required him to be here on 4th January. This is quite natural. It may be that I was not very well at the time. When I was not well I thought it essential that he should be here for the outside world but De Wildt was there and he had to do the responsible part of the business. And De Wildt had to have his canvasser for visiting the bazaar. It is nothing extraordinary, that telegram. It was sufficiently important for me to telegraph for him. There was no harm in my doing that because he had had a sufficiently long holiday.

My wife has no brother. I had no relations here to take my place.

I put it to you that you or your wife's brother was working in the firm? My wife had no brother. She is one of three sisters. My wife had no relations here. There was no cousin either not even a half brother.

I was a partner of the firm he had at Diyatalawa. It was a small business and his brother was in charge of that business. I could not get any accounts of the business. I did not write to them and ask for accounts. There was always a loss according to him and there were no accounts sent to me. I asked for accounts at the beginning because I wanted to see how the position was. When I asked for accounts I never got them. That is why I sent Mr. Pope there. I started my business before the war. I do not remember exactly the year. I do not suggest that plaintiff was trying to swindle me. I had the right to see the accounts and I wanted to see the accounts. What is your suggestion when you say you could not get the accounts? I wanted to see the accounts because it is regular business to have them. I could not go and see the accounts as I do not know Tamil. The books were audited but that was on my urgent request. On my insistence that was done. It was a small business and eventually it was wound up. Plaintiff is still having that place, he did not have to leave it owing to any trouble with the building. I wanted to wind it up because I wanted to get out of it. I think that business is still going on under another name. I did not bring up the question about that business in my examination in chief.

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I did not ask the plaintiff to give me a pro note when I lent him the money. P1 is my receipt to him given in August 1944. There is a reference to a pro note in that that is because he said he would give me a note. It is possible he gave me one but I could not find it when the business was closed so I stated about it in that receipt to cancel the note if he had given me one.

(Shown P6). This chit was made by me because I wanted to know about my business. It is a summary from the books of the profits of the business at that time. I had to go through those accounts.

What were you looking into the profits for? Why should not I. From 10 a business point of view I wanted to know what the profits were. It was for me to know. I would often call for the books and look into this and that. I did not have the balance sheet when I made this.

Can you give any reason why you wrote this down?

To have an analysis of the profits.

For what purpose?

To know how I was standing.

I do not know whether these are the profits of the Sundries Department, they may be. If they are, I made out that paper to know what those profits were. I did not give it to plaintiff. I do not know how he got it. He 20 never saw me make it. It is in my handwriting and it was on my desk and it has disappeared.

When plaintiff was being examined in the box I was seated behind my proctor.

Did you tell your proctor that this was never given to the plaintiff?

I do not remember whether I said so.

It was I who wanted the information which is in that chit. It was not the accountant who wanted the information. In my examination in chief I said it must have been in the file for the information of the accountant. I could not say why he wanted it. I wrote these figures on that paper 30 because I wanted to know my position and how this paper disappeared from my office I do not know. I cannot recollect what the three sums shown in this paper are, that is the 51703 the 87102 etc. Those figures must be from the balance sheet. I do not know whether those figures came from the balance sheet. I cannot say what the Rs. 301 which is deducted is. Plaintiff may know about it. Plaintiff may know about this more than myself because he has probably better knowledge than me I admit. I did not give him this paper. He must have found about it from other sources, in another way. I do not know plaintiff knew what this paper was about. If plaintiff happened 40 to find that piece of paper I do not know if it would have conveyed anything to his mind. If I found that piece of paper and found

it was in my writing it would still not convey anything to me. If I found it would have taken it to the bookkeeper and asked him what it was. The balance sheet would not appear in the books. The yearly balance sheets are not copied into the books of account. The balance sheets are kept in the safe. I do not know whether my balance sheets are in court.

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(Shown P8). This was not handed to the plaintiff by me. I saw this yesterday for the first time. I did not say yesterday that I might have told the plaintiff in 1943 that the profits were 146,000 and that Rs. 75,000 should be deducted as expenses. What the plaintiff has stated is correct that when  
10 the permit is obtained the allotment is made according to the previous trade of the permit holder. I do not know whether a good number of traders did not know what amount they were allowed. My evidence yesterday on that point is correct, that if they did not get the permits it could not be done it was not easy then. I do not know whether plaintiff went round getting these permits or that he saw that dealers got their permits. I did not go and help in doing that. I was always out myself on business. Sometimes he went to the dealers and got these permits. He went to the Food Controller and got them the permits. Plaintiff is not if he says he did all that work of getting permits for dealers the dealers got  
20 them from the Controller.

(Shown letter dated 11-1-41 P30). This is my letter. I admit I have written to him in January 1941 in the same strain as I wrote to him when he was in India. I addressed him as dear Mr. Sathar and ended with kind regards. I wrote to my other clerks also in that way.

When plaintiff joined me from Ibrahim Saibo and Co. he joined me not as a partner but as a salesman. I cannot say when he came in whether he was given the highest salary paid to any member of my staff.

(Shown P12). This shows one man was paid more than the plaintiff. He is the piece goods broker. He was a broker. He was paid Rs. 175  
30 and plaintiff was paid Rs. 150. Karalasingham the broker also got a small commission. I cannot remember whether I had to reduce Karalasingham's salary.

(Shown P12). Pages X and Z show that plaintiff was drawing Rs. 150 a month and Karalasingham Rs. 125. I cannot remember the reason for that reduction. It was not done so that the plaintiff should draw the highest salary.

I cannot remember saying yesterday that if there was any agreement about the 1/8 it would have been in writing. I must have said that. Yes I said it. That is the substance of what I said.

40 Have you got any instances in which you have entered into written agreements with your employees?

I do not think so. There is a deed of partnership between myself and De Wildt. When I was in partnership with plaintiff in Diyatalawa there was no written agreement. When I employed Karalasingham agreeing to give him a commission I did not have a written agreement.



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I did not pay any of the other clerks such a big bonus as plaintiff was given. Some clerks may have got three months' bonus at times, that is the highest they got. The cash book will show that. (Witness refers to page 78 of the cash book P10). This shows under date 28-3-42 a bonus given to the whole staff of Rs. 780. I cannot find any entries of bonus paid to any other member of the staff comparable to that paid to plaintiff. It was the accumulated three or four years' bonus that made the figure Rs. 9,000. I did not arrive at that figure. Rs. 8,500 was the balance of two years' bonus. There is the debit side and credit side in the accounts. If it is entered as balance bonus the figure must have been decided two years prior. 10

How did you arrive at the figure 9,000?

I did not arrive at that figure. It is made up of Rs. 5,000 and 4,000. One year 4,000 and the other year 5,000.

How did you arrive at those figures?

That was the bonus we decided to give the plaintiff. I and De Wildt decided on that. We agreed to give him a larger bonus than the rest of the staff. The staff must have got a bonus at that time. The rest of the staff also must have got a bonus at that time.

Can you point to any entry showing that any other member of the staff got a bonus on 3-10. 20

I do not know the bookkeeper is no longer in my employ, he is in plaintiff's employ. I have nothing to do with plaintiff's basis as to how that was arrived at. I did not mention anything about 72,000 in my evidence. I did not admit the Rs. 146,000 less 75,000 in my evidence.

(Evidence read). So you admit that he might have got the figure 72,000 from what you told him?

I never spoke of 72,000. I do not withdraw anything which I said yesterday. It is different if I have said that I might have given him an idea when he spoke about the bonus.

Why should he suddenly in October come and speak to you about the 30 bonus?

He did not get any bonus in October 1943. He did not come and talk about a bonus in October. That entry in October means he drew that sum from his account. It was paid to him on 30-10. I cannot give any definite date when he came and spoke to me about the bonus. I can give no figures on which we decided to pay the Rs. 9,000. We looked at the balance sheet and then we decided we could give so much to the staff and there it ends. I cannot say whether De Wildt will remember all this. I did not ask him. He is not working with me now. He has retired. He is still in Ceylon. He retired last March. He has more or less been paid out. The 40 accounts are not completed yet. He will be interested to know whether he will be liable to pay a share if plaintiff succeeds. I have not spoken to him about it. I am not calling him as a witness.

I went to Bombay in 1944. Before that there was a discussion with plaintiff regarding his position. He suggested that he should leave. I was not horrified. Nobody is indispensable. He did not do any business in India except with regard to coffee. Nothing came out of all that I had written to him about while he was away. I did not want to keep him. When I came back I reminded him about his resignation because he gave me the impression that he had forgotten it. I said, before I left you wanted to leave and that stands and he said yes it stands. I said that on the terms he wanted, in my evidence, I could have got an assistant from  
 10 Europe. It was impossible, I admit at that time to get a man from Europe. That was a general statement of mine and I meant that you can get a man out on terms like that. I could not get anyone during the war.

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Re-examined.

The Diyatalawa business was started because plaintiff wanted me to help his brother. I lent him five or six thousand rupees. It was not because I wanted to get a profit out of the business it was more to help him and after that I expected a share of the profits. He gave me no accounts. He was in Colombo himself. There was no need for me to go to Diyatalawa and the accounts were in Tamil. I did not write to him because he  
 20 was in the office with me, seated close to me. As a matter of fact he gave me no accounts and I had to ask Mr. Pope to go and audit the accounts. I told plaintiff I could not continue any longer and wanted it wound up. The income tax people were asking questions and I had to explain and he would not disclose the profits. I took plaintiff on as salesman and canvasser and he remained that when he left. As such he had to go into the Bazaar and get me information. He had to try and get me business and do everything possible for the firm. I sent him to India to buy coffee and if there was any other business he had to report to me about it. Every  
 30 salesman sent to India had to do the same thing. The only business he did was to get me 50 tons of coffee and on that I did not make much profit. He was a hard worker and that is why I gave him those bonuses.

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 nation

(Shown P5 page 79). My financial year ends on 31-3-41. The entry on 31-3 is on the credit side crediting the Rs. 5,000. There was no question of commission at all. He was in the habit of drawing money from time to time. On the other side against 14-7 there is the entry cash in settlement of commission Rs. 2,399. That must have been the balance due. On 20-12 there is another entry of advance given Rs. 500. On 31-3-42 there is again a credit of bonus of Rs. 5,000. That balance is carried to the following year Rs. 4,500. On 31-3-43 he is credited again  
 40 with bonus of Rs. 4,000 and on 30-10 there is an entry "In settlement of bonus. Rs. 8,500." My journal also show that these are entered there as bonuses. The broker was getting a small commission and he drew that every month.

My bookkeeper was Victoria and he left my firm early this year. My present bookkeeper is a man who is new to the job. The administration

No. 6  
Defendant's  
Evidence  
W. L.  
Bogtstra  
Re-exami-  
nation  
--continued

part of the office is done by me now. In 1941/42 the administration part was done by De Wildt.

I submitted a statement to the income tax authorities and the bonuses I paid to the members of the staff are shown there.

(Mr. Hayley objects to this evidence. Says it does not arise on cross-examination and it should have been put in chief.

I allow the document to go in Mr. Hayley if Mr. Hayley wants to put any further questions I shall allow them).

We had to submit this statement on instructions from the Income Tax office. (Mr. Wickremenayake marks it D6). 10

Mr. De Wildt celebrated his 25th anniversary in 1943. On that occasion an extra bonus was given to the staff from De Wildt's private account.

TO MR. HAYLEY.

This statement was taken from the account books. This is a copy made in the office. I cannot say from what book this was taken. I am not able to say where that book is. The books from which the statement was extracted will be in the office I cannot say what those books are. I cannot point out to them. Mr. De Wildt made this statement. It is signed by him. I cannot say why he has not put in this statement the Rs. 12,000. This statement was made on 12-11-1945. When this document was made 20 I cannot say whether I had already received plaintiff's letter of demand. It is possible that long before I had a letter of demand from the plaintiff I did not ask De Wildt to make this document the Income Tax Office called for it. I do not have my other Income Tax papers here. They will be in the office.

At this stage Mr. Wickremenayake withdraws D6).

Sgd. S. C. SWAN,  
*District Judge.*

Mr. Wickremenayake closes his case.

No. 7  
Addresses of  
Counsel

## No. 7

30

### Addresses of Counsel

30-5-46.

(After lunch).

Mr. Hayley continues his address.

He emphasises the fact that before the plaintiff joined the firm of Bogtstra & De Wildt he and Bogtstra carried on business in partnership. According to Bogtstra plaintiff was an energetic handworking man, working up to midnight sometimes. It was not suggested that any other clerk did work of such a nature. Mr. Bogtstra in the box was either trying to

deceive the court or he was entirely helpless and useless businessman. He knew practically nothing about his own business. The court must therefore undoubtedly conclude that it was the plaintiff who was the businessman. Bogtstra could not even remember the number of clerks he had, what they were paid or any other details.

No. 7  
Addresses of  
Counsel  
—continued

According to Bogtstra plaintiff went to India mainly to make a tender to the Coffee Board. The documents prove that plaintiff was in India for a considerable length of time and did much more business than the coffee transaction. Plaintiff was in fact in India from June to November 1942  
10 (see P13 to P26). It was because of plaintiff's absence in India during this time that the accounting was done in 1943. Plaintiff actually returned in February 1943. These documents are entirely consistent with the position that plaintiff was almost a partner of the firm. It was even contemplated to send plaintiff to Delhi and other parts of India. When Mr. Bogtstra fell ill plaintiff was telegraphed to return.

He stresses the fact that in one of the letters written to plaintiff in India piece goods is mentioned. There was a piece goods broker. The fact that plaintiff was communicated with with regard to piece goods shows that he held a unique position in the firm—almost that of a partner  
20 (see P20). He submits that ordinary common sense, on a reading of those letters, could not accept Bogtstra's statement that plaintiff was an ordinary clerk on a salary of Rs. 125 with an occasional bonus and without the expectation of anything else.

Referring to the evidence he says that the plaintiff has not contradicted himself on any material point. Bogtstra gave evidence in a manner which is difficult to describe. He not only contradicted himself but proved himself to be absolutely untrue. In cross-examination he denied things he said in examination in chief. When cross-examined on document P5 Bogtstra says that he "rowed" with his bookkeeper about the mistake. The bookkeeper,  
30 however, was not cross-examined on this point. Victoria said that he wrote it like that because Mr. Bogtstra would have told him to write it like that.

No explanation has been given why De Wildt was not called. He should have been called. He is the first person who made the alleged mistake in writing 'commission' on the cheque. Not only is De Wildt not called but Bogtstra wants the court to believe that he never discussed this case with him. Mr. Hayley asks the court to draw the inference that De Wildt was not brought into the box because he would not speak an untruth and support his erstwhile partner.

It was known that the accounts were going to be queried but nobody  
40 was called to speak to the books. Victoria was put in the box by the plaintiff but he was not cross-examined.

In the defendant's books of account the payment is referred to as either commission or bonus. Plaintiff's book P9 which was kept in the ordinary course of business has not been challenged as having been concocted for this case. On 4-1-41 at page 3 of P9 there is the entry 'Part

No. 7  
Addresses of  
Counsel  
—continued

of advance on commission due'. On page 92 is the entry 'Being amount received from Bogtstra & De Wildt towards commission for the year 1-4-40 to 31-3-41 based on 1/8th share of the net profit of Rs. 40,000 for the Sundries Department.'

Mr. Hayley points to the entry of Rs. 5,000 at page 93 of P9 and what has been written against it. Mr. Wilson submits that this was not brought out in evidence; if it was brought out in evidence he should have cross-examined the plaintiff. Mr. Hayley says that P9 is clearly a book kept in the ordinary course of business.

He says that all kinds of allegations were made by Victoria but yet 10 when Victoria got into the box not one single question was put to him in cross-examination.

Commenting on the fact that 'bonus' appears on the credit side of P4 and P5 he says that the word is of no significance to an amount credited to the plaintiff's account. It is only when it came to be paid out that the entry of the payment to the plaintiff is significant.

P12 shows that all clerks including Sathar were paid their salary for 1940 and the Christmas bonus for 1940. A few days later, in January 1941, Rs. 2,500 is paid to Sathar. Bogtstra calls this payment a bonus similar to the bonus paid in December. Over the entire period of those books no one 20 else has got a commission or is there a reference to commission. Even the payment of Rs. 2,399 is called 'Payment of balance commission'. The rough memo P6 shows how Rs. 5,000 was calculated. Sathar says that it was given him by Bogtstra. It is admitted now that it is actually in Bogtstra's handwriting. There is no reason why this figure of Rs. 57,000 should be discussed with the plaintiff if only Mr. Bogtstra and Mr. De Wildt were concerned in the payment of bonus. He refers me Sathar's evidence (P4) and Bogtstra's explanation (P23). Bogtstra says: 'I must have asked the bookkeeper or Mr. De Wildt to look into the figures.... This must have been in the file for the explanation of the accountant.' This 30 payment is reflected in P9 at page 93.

The next payment was in 1943 because plaintiff was in India. He returned in February 1943. That accounts for their finding out the profits of the previous year and the reckoning of two years' profits together. This payment is not reflected in P9 because Sathar & Co. had closed down. At page 153 of P9 the payment of Rs. 500 is referred to as 'Advance' due on profits. The payment of Rs. 8,500 is paid with exactly the same description—commission. Again, there was a rough accounting on P8 but this time in the handwriting of Victoria. He refers me to plaintiff's evidence on this point (P5). Victoria in his evidence said that he got these figures 40 from the balance sheet and gave them to Mr. Bogtstra. Bogtstra said, 'I might have given him an idea of the situation when he spoke to me about commission'.

Mr. Bogtstra said that he had given large bonuses to the other members of the staff. He has not been able to prove from his books the payment of one such amount.

No. 7  
Addresses of  
Counsel  
—continued

Documents on Tuesday.

Judgment on the 9th.

Sgd. S. C. SWAN,  
*District Judge.*

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**No. 8**

**Judgment of the District Court, Colombo**

No. 8  
Judgment of  
the District  
Court,  
Colombo  
23-6-47

10

**JUDGMENT**

The plaintiff's case is that the defendant agreed to pay him a commission of 1/8 share of the profits in addition to his salary. He maintains that he was paid on this basis a sum of Rs. 5,000 for the year 1st April 1940 to 31st March 1941, and a sum of Rs. 9,000 for the period 1st April 1941 to 31st March 1942. He was not paid for the period 1st April 1943 to 31st March 1944. He assesses the nett income for the said period at Rs. 225,000/-. He also claims a sum of Rs. 1,500 as damages for wrongful dismissal in addition to a sum of Rs. 500 as salary for the month of December 1945. Admittedly the sum of Rs. 500 is due to him for that month.

20 Plaintiff asks for an accounting in respect of the profits for the period 1st April 1943 to 31st March 1944 and in the event of the defendant failing to account, for judgment in a sum of Rs. 28,125. Plaintiff further states that he is entitled to be paid 1/8 share of the profits of all transactions arranged or executed by him and on all contracts put through by him before 31st December 1944 but in respect of which goods were delivered and/or performance was completed after 31st December 1944. He assesses the total nett income in respect of the same at Rs. 25,000/-. He asks for an accounting in respect of the profits of the business so put through by him, in the alternative for judgment in Rs. 3,125 being 1/8 of Rs. 25,000.

30 Prior to taking employment under the defendants, the plaintiff was employed under Ebrahim Saibo & Co. at Diyatalawa. It was there he met the 1st defendant and apparently they became good friends. In fact the evidence reveals that subsequently the plaintiff and the 2nd defendant conducted business in partnership in Diyatalawa.

When the plaintiff wanted to leave the firm of Ebrahim Saibo & Co., the 1st defendant offered him work and the plaintiff started work in July 1937 on a salary of Rs. 150/- per mensem. He was paid at that rate with annual bonuses at Christmas, until July 1940, at about which time the entire staff received a salary cut of 10 per cent. That salary cut was

40 restored in January 1941. The plaintiff says that about 1939, after the outbreak of war, he found that there were possibilities of developing the

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indent business in the general import or sundries department in which he worked and he made overtures to the 1st defendant and suggested that if he showed a vast improvement in the profits earned by that department he should receive a share. The 1st defendant thereupon, on behalf of the firm, agreed to pay him a 1/8 share of the profits in addition to the salary and dearness allowance which he was entitled to.

This commission was to be paid as from 1st April 1940. I may at this juncture mention that defendants computed their financial year from 1st April of one year to 31st March of the following year coinciding with the Income Tax year.

10

The defendants admit that the plaintiff was paid Rs. 5,000 for the year ending 31st March 1942 and Rs. 4,000 for the year ending 31st March 1943, but they maintain that these were ex gratia payments and not paid by way of commission or share of the profits which the plaintiff might legally demand or claim.

Plaintiff's salary was subsequently raised to Rs. 500. According to the 1st defendant, the plaintiff was not satisfied with the insecurity of a bonus. He wanted his salary substantially increased. 1st defendant suggested increasing it to Rs. 400/-, the plaintiff wanted Rs. 500/- and the firm agreed to pay the plaintiff Rs. 500/- a month. The plaintiff, however, says that his salary was increased from Rs. 150/- to Rs. 500/- in addition to the commission of 1/8 share of the profits. He concedes, however, that he used to get Rs. 500/- without dearness allowance which had been paid at the rate of Rs. 100/- per mensem.

The evidence reveals that on 4th January 1941 the plaintiff obtained a sum of Rs. 2,500/- from the firm. He says that this was an advance against his 1/8 share of the profits. 1st defendant, however, maintains that it was an advance against bonus which he and the 2nd defendant had more or less decided to pay the plaintiff. This sum of Rs. 2,500/- was paid by cheque. The counterfoil has been produced, marked P2. On it you find the words "Advance against commission". That is admittedly in the handwriting of the 2nd defendant. The plaintiff says that he also gave a receipt for the payment, but the defence denies that fact. The plaintiff has produced a copy (P3) dated 4-1-41. From the evidence of the book-keeper Victoria I think it can reasonably be inferred that a receipt was actually given and I see no reason to reject the genuineness of the copy P3. P3, however, does not advance the plaintiff's case any further than the statement in the counterfoil P2, because in P3 also the words that are used are "Advance against commission."

On 14-7-41 plaintiff was paid the balance sum of Rs. 2,399.43 against the amount due to him. That has been entered in the ledger P5 as "Cash in settlement of commission due". That amount too was paid by cheque the counterfoil of which has been produced, marked P7. In the counterfoil the following words are written: "In settlement of his commission account—Personal". Advocate Kandiah tried to lay stress, not merely on the words

40

“Commission account” but also on the word “Personal”. I do not think the word “Personal” in the context has any added significance. It apparently was so written that the entry should be made in the Personal Ledger kept by the defendant firm. It would appear that when advances were given to employees or partners of the firm they were entered in the Personal Ledger.

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The plaintiff says he gave a receipt for this amount but this was denied by the defence and a copy which the plaintiff sought to produce was ruled out on the ground that it had not been listed. The counterfoil P7 was written by Victoria. The cheque itself was signed by Bogtstra. Victoria giving evidence for the plaintiff says he wrote “In settlement of his commission” because Mr. Bogtstra would have told him to write like that. Cross-examined in regard to the significance of the word “Commission” in the counterfoils and books of account, 1st defendant said that the word was a mistake for bonus and he pointed out that in P5 the credit entries contain the word bonus.

I do not think this case can be decided in plaintiff's favour solely on the ground that in the counterfoils and in certain entries in the books of account the word commission is used, nor can it be decided in favour of the defendants because when the amounts were credited to plaintiff's account they were credited as bonus. It is, however, significant that the person who made the original mistake, namely Mr. de Wildt, the 2nd defendant, has not got into the witness box to explain how he came to give the plaintiff “an advance against commission” on 4-1-41. On that day admittedly the 1st defendant was not in office. When the plaintiff applied for an advance there must have been some discussion between the plaintiff and the 2nd defendant as to the nature of that advance. The only person who can speak to the conversation, apart from the plaintiff, is the 2nd defendant. He is in the Island and no explanation has been put forward for his not being called to contradict the plaintiff. Mr. Hayley in his address asked me to draw the inference that the 2nd defendant has not been called into the witness box because he would not have supported 1st defendant's testimony on this point.

The plaintiff says that before he was paid the balance amount of Rs. 2,399.43 on 14-7-41 Mr. Bogtstra and he went through the accounts in order to ascertain what the profits were for the financial year ending 31-3-41. He has produced a document, P6 on which certain figures have been jotted down. Those figures are admittedly in the handwriting of Mr. Bogtstra. The plaintiff's case is that Mr. Bogtstra added up the gross profits of the sundries department as Rs. 57,754.60 from which he suggested that certain deductions must be made on account of departmental expenses, income tax etc., and for that purpose subtracted Rs. 17,754.60 arriving at the round figure of Rs. 40,000. Mr. Bogtstra admits that P6 is in his handwriting. He cannot say why he jotted those figures down. He denies that he handed this document to the plaintiff. He suggests that the plaintiff must have stolen this document from a file in the office. I find it impossible to believe



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Mr. Bogtstra's evidence on this point. There can be no doubt that these figures were entered on P6 for some particular purpose. It is inconceivable that a business man like Mr. Bogtstra could forget why he wrote down those figures. If he looked at his books he would have been able to ascertain what the figures represented. If he had taken up the simple position that he jotted down the profits earned in plaintiff's department in order to calculate what he could give the plaintiff as a reasonable bonus during the financial year ending March 1941, I could have believed him. That would have been a very satisfactory explanation for the sum of Rs. 5,000 paid to the plaintiff even if it was by way of bonus. But Mr. Bogtstra's attitude towards this document and his allegation that the plaintiff stole it are very suspicious. I see no reason to disbelieve plaintiff's story that these figures were gone into in order to arrive at the commission payable to him for the year ending March 1941.

The plaintiff himself has produced a book of account, P9, the genuineness of which has not been challenged. On page 3 against entry dated 4-1-41 the sum of Rs. 2,500 has been credited as being "Part advance on commission due". On page 92 against date 16-7-41 the following entry appears "By amount received from B & De W. towards commission for year 1st April 1940 to 31st March 1941 based on 1/8 share of a nett profit of Rs. 40,000 for the Sundry Department....Rs. 5,000". On the same date there is a debit entry of Rs. 10.47 being "balance due to B & De W in full settlement of Saree Account".

Mr. Wickremenayake in his address said that in the examination of the plaintiff Mr. Kandiah who was examining the plaintiff at the time, did not draw specific attention to the significance of the entry on page 92. But there can be no doubt that that entry appeared at the time, because nobody suggests that it was inserted subsequently. In fact it could not have been subsequently inserted as an examination of the book will show.

The plaintiff says that the accounts in respect of the profits for the financial years ending March 1942 and March 1943 were looked into in 1943. Admittedly he was in India for some time from June 1942 and he eventually returned in February 1943. That perhaps was the reason why the account for the year March 1942 was not settled earlier.

Plaintiff's case is that he and Bogtstra went into accounts and arrived at a figure of Rs. 72,000 as the profits for these two years. He has produced document P8 which is in the handwriting of Victoria. Victoria says that he gave P8 to Mr. Bogtstra, having taken the figures from the balance sheet which has been prepared by Pope & Co. Mr. Bogtstra asked him for the statement and he gave it to him. The items on P8, according to Victoria, represent the profits on the Sundries account as well as on the sugar and coffee transactions which were transacted by the plaintiff in India.

I see no reason to disbelieve the evidence of Victoria. It is true that he left the defendant's firm at the end of February 1947. He says he did

so because he lost his brother and wanted to go back to India. He is now in a firm in Madras of which the plaintiff is a partner. That does not necessarily mean that his evidence is untrue or has been procured by the plaintiff. In fact not one single question was put to Victoria in cross-examination to shake his credit.

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The plaintiff had received Rs. 500 on the 20th of December 1941 which, according to defendant's books was entered as an advance against salary. In plaintiff's book of account P9 there is an entry on page 153 against date 20-12-41 "By Hongkong Bank Cheque being advance towards  
10 amount due to me on profits for year 1941/42.....Rs. 500". About the genuineness of this entry there can be no doubt and it proves the plaintiff's statement that the sum of Rs. 500 was not an advance against salary but an advance payment on account of profits.

On behalf of the defendants Mr. Wickremenayake emphasised the fact that in P5 there was no credit of Rs. 9,000 for two years but two separate credits of Rs. 5,000 and Rs. 4,000 respectively, both of which have been entered as bonus but which the plaintiff maintained was paid as advance against commission. The balance Rs. 8,500 was paid by cheque on 31-10 and in P5 there is the entry "Cash in settlement of commission  
20 Rs. 8,500". The counterfoil for the payment of Rs. 500 was not produced. The plaintiff asked for it but counsel for the defendant said that plaintiff was not entitled to it as the defendants had not been noticed to produce the document. I cannot understand why the defendants should have themselves refused to produce it if it bore out the entry in P5 that it was an advance against salary. I do not think that the fact that these amounts of Rs. 5,000 and Rs. 4000 were separately credited for the two years in any way detract from the truth of plaintiff's story that he was promised commission on the profits.

Before proceeding further I should like to deal with the point made by  
30 counsel for the defence, namely, that if the defendants had agreed to pay plaintiff a share of the profits there would have been some writing entered into. I do not think so. Admittedly Karalasingham who was the piece goods broker was paid a commission on profits. There was no writing entered into between defendant's and Karalasingham about that matter. It is also significant that the plaintiff and the 1st defendant ran the Diyatalawa business in partnership without a partnership agreement.

The sum of Rs. 8,500 was not entered by the plaintiff in his book of account P9 because according to him by that time the Diyatalawa business had been wound up. With this omission excepted there can be no doubt  
40 that plaintiff's book of account supports the plaintiff's story that the amounts received by him were on account of profits earned by his department and not as bonus. Plaintiff gave his evidence quite well. He did not contradict himself on any material point. As for the 1st defendant he was most unreliable in the witness box. He contradicted himself more than once and said things that could not possibly be true. For a Dutchman he was extraordinarily voluble, but it must not be thought that he was

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handicapped by reason of unfamiliarity with the English language. In fact, his knowledge of English seemed to be very good. He certainly showed a nice appreciation of the word "insistence". He said with reference to the Diyatalawa business, "The books were audited but that was done on my urgent request". Realising that urgent request was not the correct expression, he added, "On my insistence that was done".

As between the plaintiff and the 1st defendant I have no hesitation in accepting the word of the former. On the evidence I would hold that the defendants agreed to pay the plaintiff 1/8 share of the profits of the business in addition to his salary and dearness allowance. When the salary was increased from Rs. 150 to Rs. 500 the dearness allowance ceased.

As regards the plaintiff's claim for damages for wrongful dismissal I cannot see how it can be sustained. On 29-11-44 the plaintiff received D3 in which he was told that his services would not be required after the 31st December 1944. His proctor replied by D1 dated 4th December in which he says "My client is surprised at such an intimation as in none of the conversations he had with your goodselves was the matter of his resignation broached. My client, however, is glad and relieved to sever his connection with your firm". In these circumstances I fail to see how the plaintiff can claim anything by way of damages.

20

I answer the issues framed as follows :

- (1) Yes.
- (2) Yes.
- (3) Yes.
- (4) No. He is only entitled to Rs. 500 as salary for December.
- (5) Yes.
- (6) The plaintiff was paid sums of Rs. 5,000, Rs. 5,000 and Rs. 4,000 representing his share of the profits for the three years ending 31-3-43.
- (7) They were not ex gratia, they were paid to the plaintiff as commission on a share of the profits.
- (8) There was no such agreement, but plaintiff by his proctor's letter D1 acquiesced in the position that he should leave on 31st December.
- (9) Plaintiff is not entitled to any damages.

I give judgment for plaintiff for Rs. 500 being salary for the month of December. I also direct that the defendants should account to the plaintiff for his 1/8 share of the profits of the General Import and Sundries Department for the year 1-4-43 to 31-3-44. In the event of the defendants failing so to account plaintiff will be entitled to judgment in a sum of Rs. 28,125;40

(b) Directing the defendants to render an account to plaintiff of the profits earned by the General Import and Sundries Department for the period 1-4-44 to 31-12-44. In default plaintiff would be entitled to judgment in a sum of Rs. 4,375; (c) Directing the defendants to render an account to plaintiff of the profits earned by the General Import and Sundries Department in all transactions arranged or executed by the plaintiff and on all contracts put through by him before 31-12-44 in respect of goods delivered and/or performance completed after 31-12-44. In default judgment for plaintiff in a sum of Rs. 3,125.

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10 Plaintiff will also be entitled to the costs of this action.

Sgd. S. C. SWAN,  
*District Judge.*

23-6-47.

Pronounced in open Court in the presence of Mr. Abdul Cader for the plaintiff and Mr. John Wilson for the defendants.

Sgd. S. C. SWAN,  
*District Judge.*

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**No. 9**

**Decree of the District Court, Colombo**

No. 9  
Decree of  
the District  
Court,  
Colombo  
23-6-47

20 IN THE DISTRICT COURT OF COLOMBO

No. 16684/M

MOHAMED AKBAR ABDUL SATHAR of "Jeelani Manzil"  
2nd Division Maradana in Colombo.....*Plaintiff.*

*vs.*

1. W. L. BOGTSTRA and
2. H. DE WILDT both carrying on business in partnership under the name style and firm of "Bogtstra and De Wildt" at Australia Buildings, Fort, Colombo.....*Defendants.*

This action coming on for final disposal before V. L. St. Clair Swan,  
30 Esquire, District Judge, Colombo, on the 23rd day of June 1947, in the presence of Proctor on the part of the plaintiff and of Proctor on the part of the defendants it is ordered and decreed that the defendants do pay to the plaintiff the sum of Rupees five hundred (Rs. 500) being salary for the month of December.



To

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

No. 10  
Defendants-  
Appellants'  
Petition of  
Appeal to  
the Supreme  
Court  
30-6-47  
—continued

On this 30th day of June, 1947.

The petition of appeal of the Defendants-Appellants abovenamed appearing by John Wilson, their Proctor, states as follows:—

1. Plaintiff who is an employee of the defendants brought this action alleging that the defendants had about the end of 1939 agreed to pay him 1/8 share of the profits together with his salary in return for his services. He alleged that he had been paid a sum of Rs. 5,000/- for the year ending 31st March 1941 and a sum of Rs. 9,000/- for the years ending 31st March 1943. He prayed for an accounting in respect of the year ending 31st March 1944 and for 1/8 share of such accounting. He also claimed damages for wrongful dismissal.

2. The defendants denied an agreement to pay 1/8 share of the profits and stated that the sums of money paid to the plaintiff were ex gratia payments in view of the large profits made during the periods and the good work done by the plaintiff. They also denied that the plaintiff has been wrongfully dismissed and stated that the plaintiff had terminated his services with the defendants.

3. The case went to trial on the following issues :

- (i). Was it agreed that the plaintiff should receive in addition to his salary 1/8 of the nett profits of the General Import Department from 1-4-40 as stated in the plaint?
- (ii). Have the defendants failed to pay the said share from 1-4-43 to 31-12-43?
- (iii). Is plaintiff also entitled to 1/8 of the profits earned between 1-1-45 and 31-3-45 as claimed in paragraph 7C of the plaint?
- (iv). Is the plaintiff entitled to Rs. 2,000/- as damages less the sum of Rs. 500/- brought into Court?
- (v). Is defendant liable to render an account of the profits from 1-4-43 and if so for what period?
- (vi). Was the plaintiff paid a 1/8 share of the nett profits for the years 1-4-40 to 31-3-41; 1-4-41 to 31-3-42 and 1-4-42 to 31-3-43?
- (vii). If not were the payments paid to the plaintiff at the end of the said periods in the nature of ex gratia payments?
- (viii). Was it agreed between plaintiff and defendants in the month of November that the plaintiff should resign as from 31-12-44?
- (ix). If so is plaintiff entitled to claim any sum by way of damages?

4. By his judgment dated the 23rd day of June 1947 the learned Judge held that the plaintiff had been promised 1/8 share of the profits and ordered an accounting or in default a sum of Rs. 35,625/-. He however dismissed plaintiff's claim for damages for wrongful dismissal.

No. 10  
 Defendants-  
 Appellants'  
 Petition of  
 Appeal to  
 the Supreme  
 Court  
 30-6-47  
 —continued

5. Being aggrieved at the said judgment the defendants appeal therefrom to Your Lordships' Court for the following among other reasons to be urged by Counsel at the hearing of the appeal :

(a) the said judgment is contrary to law and against the weight of the evidence in the case.

(b) it is submitted that in the absence of a writing the evidence of the plaintiff is insufficient to discharge the burden thrown on him to establish the agreement.

(c) the judgment of the learned Judge has been influenced to a very large extent by the book P9. It is submitted that the learned Judge has misdirected himself as to P9. The entries to which he refers are not admissions by the defendants but entries made by the plaintiff himself. It is therefore submitted that they are not admissible except as to corroboration of his evidence and there is no evidence as to when these entries were made.

(d) the learned Judge stresses the fact that the genuineness of P9 was not challenged. It is submitted that no reference was made to these entries by the plaintiff or his witnesses nor was the attention of the court directed to them at any time until the close of the case for the defence. Apart from these entries the book P9 did not assist the plaintiff nor touch 20 the case for the defence and there was therefore no necessity to challenge the genuineness of the book.

(e) It is submitted that there is an inherent improbability in the story for the plaintiff. There was on the evidence no reason why the defendants should make this offer in 1939 in view of the state of their business. Moreover the plaintiff's account of the circumstances in which this agreement was made is so contradictory that the learned Judge should not have accepted it.

(f) it is submitted that plaintiff's story that accounts were looked into for the two years 1941—1943 is contradicted by the document P5 which 30 showed that credit had been given to him at the end of each year. Plaintiff's story therefore that accounts were looked into at one and the same time and that the defendants made certain deductions cannot be true.

(g) with regard to document P6 the learned Judge is wrong in stating that Mr. Bogtstra suggested that plaintiff had stolen this document. Mr. Bogtstra merely could not explain how the document came into the possession of the plaintiff but was certain that he did not give it. It is submitted that on this point also the learned Judge has misdirected himself and that it has influenced him in preferring the evidence of the plaintiff to that of Mr. Bogtstra.

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(h) the learned Judge has also given judgment for a sum of Rs. 500/- which the defendants brought into Court.

(i) the learned Judge has commented on the fact that the 2nd defendant was not called. The evidence is that 2nd defendant had retired from the partnership and was in feeble health. He was not moreover conversant with this part of the business of the firm.

Wherefore the defendants-appellants pray that Your Lordships' Court do set aside the judgment of the learned District Judge and dismiss plaintiff's action with costs and for such other and further relief as to Your Lordships' Court may seem meet.

Sgd. JOHN WILSON,  
*Proctor for Defendants-Appellants.*

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**No. 11**

**Judgment of the Supreme Court**

No. 10  
Defendants-  
Appellants  
Petition of  
Appeal to  
the Supreme  
Court  
30-6-47  
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No. 11  
Judgment of  
the Supreme  
Court  
25-4-49

S. C. No. 441.

D. C. Colombo No. 16684.

*Present:* NAGALINGAM, J. & GUNASEKARA, J.

*Counsel:* S. J. V. CHELVANAYAGAM, K.C., with H. W. THAMBIAH for Defendants-Appellants.

N. E. WEERASOORIYA, K.C., with V. A. KANDIAH and M. MARKHANI for Plaintiff-Respondent.

*Argued on:* 7th April, 1949.

<sup>20</sup> *Delivered on:* 25th April, 1949.

NAGALINGAM, J.

This appeal involves a question of fact. It is a well established principle that an appellate tribunal would not ordinarily interfere with the finding of fact of a Court of first instance; but this principle is not without exception. Where the facts are such that the appellate tribunal is itself in as good a position as the original Court to sift and weigh the evidence and where in particular the oral testimony has not received in the lower court that consideration which should have been bestowed on it in the light of the attendant circumstances 'which cannot lie' the appellate tribunal would <sup>30</sup> not feel itself trammelled by the trial Judge's views in reaching on its own a decision on appeal. Besides where the disbelief of a witness expressed by the trial Court is based upon demeanour that is a strong circumstance which the appellate Court would give full weight to; but where that disbelief is based on the ground that the witness has contradicted himself and where on examination the contradictions do not amount to anything more than an incapacity to explain or remember after a period of years certain facts, the appellate tribunal would be the more unfettered to examine the evidence afresh and arrive at an independent decision.



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The simple question of fact in this case is whether the defendants who were carrying on business in partnership promised to give the plaintiff, an employee of theirs, a 1/8th share of the profits of the business as remuneration for his services in addition to salary. The plaintiff asserts that the answer to the question should be in the affirmative while the defendants the opposite.

In 1937 the plaintiff took employment under the defendants in the import department of the firm at a salary of Rs. 150/- a month. According to the plaintiff towards the latter part of 1939 he was promised by the 1st defendant a 1/8 share of the profits in addition to his salary, as he had been instrumental in enlarging and organising the business in ways that the defendants could themselves never have planned and that in fact substantial profits had been and were being earned by the firm as a result of the plaintiff's exertions. With a view to give an indication of the important position he held in the firm and in order to lend greater support to his case, the plaintiff set out in the plaint that it was agreed between him and the defendants that he "should be in charge of the general import department of the firm"; though in the course of cross-examination at one stage he described his position in the firm to be such, yet in the course of the next few sentences he expressly stated that he did not know whether it could be said he was in charge of the department and was content to describe himself as "a direct assistant to the 1st defendant".

The promise is said never to have been reduced to writing. The plaintiff's reason for not getting anything in writing is that he trusted the defendants and had no reason to think that their word was not as good as their bond. That the defendants have acted without any writing in regard to other agreements entered into by them has also been relied upon as indicative that it was not unusual for the defendants not to reduce their agreements to writing. It has been pointed out that the plaintiff and the 1st defendant admittedly carried on business in partnership without writing and that the defendants in fact had no documents entered into with their broker to whom admittedly they agreed to pay a commission on sales. In regard to the former of these circumstances it is not without significance that the business was a small one and that the 1st defendant contributed something like Rs. 1,500/- to start with and the total of his investments did not exceed Rs. 6,000/-; but in regard to both these circumstances relied upon it is a point worth positing as to why the defendants, men in affluent circumstances, who had kept their word with their broker and who had abided by the terms of the partnership though these agreements were not in writing should want to commit a breach of faith. It is said that avarice and greed may lie at the denial of a lawful claim especially where that claim is a large one. That such a motive may also lie at the fountainhead of a false claim has been put forward by way of rejoinder. The question posited must therefore be regarded as remaining without a satisfactory answer being given to it.

Having made these observations I shall now proceed to examine the claim of the plaintiff in some detail. I think it would be best to commence with a consideration of the circumstances under which the claim came to be preferred. By document D3 of 29th November, 1944, the defendants intimated to the plaintiff that his services would not be required after 31st December, 1944, and that the notice was given in pursuance of a conversation previously had between the parties. To this letter the plaintiff replied through his Proctor by document D1 of 4th December, 1944, stating that there was no previous conversation in regard to the termination of his services but that he was however glad to sever his connection with the firm. This conflict may be disposed of at once. The 1st defendant says that the plaintiff requested the payment of a commission in August or September, 1944, but that he 'flatly refused' his request whereupon the plaintiff said he would resign and the 1st defendant then accepted his resignation. 1st defendant further says that he was away in India for about three months and on his return he found that the plaintiff's conduct was such that it gave him the impression that the plaintiff was not going to act upon the resignation agreed to and that he thereupon sent for the plaintiff and reminded him of the conversation when the plaintiff reiterated that his resignation from the firm at the end of the year would stand.

In order to leave no room for uncertainty the 1st defendant says he sent the letter D3. It would appear that the effective step towards the termination of the plaintiff's services originated with the defendants rather than with the plaintiff, according to the 1st defendant's version, whereas according to the plaintiff's, not merely the effective step but the whole idea of terminating his services was one-sided and emanated entirely from the defendants. It is difficult to believe that the defendants would have referred in their letter D3 to a conversation if it was not the fact for without reference to any conversation they could have terminated the plaintiff's services if they were so minded.

But why should the defendants want to terminate the plaintiff's services? Would it have been wise or advantageous to the defendants to send away the plaintiff who was a valued employee? It has however been said that the further contents of the plaintiff's letter D1 provide the necessary answer. The plaintiff goes on in his letter to say that the only conversation he had with the defendants was in regard 'to his dues'. But if his dues were denied, would the plaintiff not have tendered his resignation then and there? The plaintiff, however, wants it to be believed that although he received no satisfactory replies in regard to his 'dues' he was content to carry on without taking any steps to ensure payment. It seems to me that although the plaintiff may in the heat of discussion have threatened to resign he hoped that his offer of resignation would not be taken seriously and that he would be allowed to continue but contrary to his hopes the 1st defendant acted otherwise and insisted on the resignation being given effect to. It was in these circumstances that plaintiff came to prefer his claim—one might almost say was forced into making a claim.

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Nor do the terms in which 'the dues' are formulated in the letter tend to inspire confidence in the plaintiff's story. The plaintiff claims his dues as commission. He does not say on what basis the commission is to be calculated but wraps up his claim in a bundle of vagueness by referring to 'a basis agreed upon'. One would have expected the plaintiff who is now claiming a definite share of the profits with no tinge of vagueness about it to have said so distinctly and clearly. The plaintiff who is a keen business man who understands the distinction between the terms 'commission', 'bonus' and 'profits' does not directly and specially ask the defendants to account to him for 1/8th share of the profits which they not only promised to pay but in fact had paid to him for at least three years previously. Far from making a pointed reference with precision to a definite agreement between them, he however employs language of a nebulous character, reluctant to reveal the basis of his claim by the studied use of a shadowy phrase—'an agreed basis'—a phrase which can be turned and twisted to suit any contingency and made to cope with any situation that may arise. Besides it is a most extraordinary feature that no reference whatsoever is made in the letter to the profits of the business as forming the basis of the plaintiff's claim, though the word 'profits' has been used in it several times, but on the contrary the claim is made on the basis of a commission pure and simple. No attempt has been made at that stage to deflect adroitly or otherwise the term 'commission' along channels of uncertainty with a view to show that commission means 'commission on profits' or that they are convertible terms. 'Commission on profits' if it means anything at all can only mean in plain language 'share of profits' and if that is what the writer meant, why does he not say so—it is obvious that he did not mean 'share of profits', hence the absence of any reference not only to 'share of profits' but also to 'commission on profits'. Another point to be noted in regard to the letter is that the basis too of the commission is not set out—no statement as regards the rate or percentage according to which the commission is to be calculated. The claim and all the details in regard to it have, it is manifest, been carefully shrouded in an uncertain ambiguity. The appellants contend that there was a set purpose the draftsman had in view in penning the letter in the way he did. They say that the plaintiff was at that date undecided as to the basis upon which he should make a claim as there never was any agreement and therefore not knowing how to proceed and not knowing what material would be available to sustain a claim he had to indulge in circumlocution as prudence dictated and safety demanded such a course and no other. I think there is great force in this submission. When the defendants repudiated the claim by their letter D4 the plaintiff by his letter D2 reiterated that it was a "*claim for commission on the mutually agreed and provable basis*" indulging once again in a generalisation. The documents D1 and D2 are not documents which any man of honesty much less a Proctor of experience would have written if precise and definite facts were within the knowledge of the writer, and support the appellant's contention that the plaintiff was reconnoitering the terrain.

The letter D2 concludes with a threat of "exposure that may prove very damaging to the business interest" of the defendants. The comment of the appellants' counsel that this letter was an attempt at compelling payment by means of a threat is not without justification.

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The plaintiff continued to work in the firm till about Christmas 1944, while these letters were passing between him and the firm and it was not till the plaint came to be filed almost a year later that the plaintiff for the first time specified that the claim was in respect of 1/8 share of the profits.

The plaintiff relies upon certain documents in support of his claim. 10 The plaintiff was given a cheque on 4th January, 1941, for a sum of Rs. 2,500/- the counterfoil of which marked P2 bears an entry, "advance against commission". The plaintiff says he granted the firm a receipt, copy P3, for the sum of Rs. 2,500/- received and described the sum as "advance against my commission account." In the defendants' book of account P4 the payment of the sum of Rs. 2,500/- is entered as "advance against commission." In the next account book P5 to which this account has been carried certain other sums paid to the plaintiff are also entered as "cash in settlement of commission." But in those very accounts the corresponding credit items are entered not as commission but as *bonus*.

20 That the term 'commission' used in these documents does not reflect the true nature of the payment made is obvious for the plaintiff himself expressly states that his agreement with the 1st defendant was for a share of the nett profit of the sundries department and *not for a commission* and that he was not *claiming a commission*; the learned District Judge himself has correctly stated that the case 'cannot be decided in plaintiff's favour' on the ground that in the counterfoils and in certain entries in the books of account the word commission is used. But though the learned Judge expressed this view in regard to the use of the term 'commission' in these various documents it cannot be gainsaid that he has however allowed 30 himself to be greatly influenced by it by placing undue importance on this term in arriving at his decision. In view at least of the basis set up by the plaintiff himself one must ignore from the consideration of the controversy between the parties the fact that the term 'commission' has been used in these documents.

The plaintiff asserts that the payments referred to as commission are really the share of the profits promised to him while the 1st defendant asserts that those payments were in the nature of *ex gratia* payments constituting bonus. It is difficult to understand why if there was an agreement to pay the plaintiff by way of remuneration a share of the profits 40 that the credit items in favour of the plaintiff were not entered in fact as share of profits but merely as bonus and it is not disputed that the credit entries had been entered long anterior to the date of dispute between the parties.

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It is common ground that the plaintiff was paid in addition to his salary and dearness allowance a sum of Rs. 5,000/- in each of the financial years 1st April, 1940 to 31st March, 1941 and 1st April, 1941 to 31st March, 1942 and a sum of Rs. 4,000/- for the year 1st April, 1942 to 31st March, 1943. In order to sustain his assertion that the sum of Rs. 5,000/- paid for the year 1st April, 1940 to 31st March, 1941 was by way of a share of the profit the plaintiff produced a document P6; this admittedly is in the handwriting of the 1st defendant and sets out the profit for that year in respect of the sundries, sugar and coffee departments of the firm, showing that the profit earned was a sum of Rs. 57,754/68. The sum of Rs. 5,000/- does not represent a 1/8 part of this sum. Plaintiff says that although the sum of Rs. 57,754/68 did represent the profits of the firm in regard to these departments nevertheless it did not represent the nett profits, for his case is that out of the gross profits the salary and other expenses such as salaries and wages had to be deducted. He says that the 1st defendant suggested that a sum of Rs. 17,000/- odd should be set apart on that account and that Rs. 40,000/- be treated as nett profits and that on his assenting to that proposal he was paid Rs. 5,000/- which represented a 1/8 share.

In regard to the years 1941-42 and 1942-43 the plaintiff relies upon document P8 which refers not only to these two years but also to the previous year 1940-41 and in this document are entered the profits from the three departments already referred to. This document is proved to be in the handwriting of the bookkeeper of the firm. The document shows that for the year 1941-42 the total profits were Rs. 106,368/- and for the year 1942-43 a sum of Rs. 40,983/-. Plaintiff says that the profits for the two years 1941-42 and 1942-43 were accounted together and showed an aggregate profit of about Rs. 147,000/-; that the 1st defendant on this occasion too suggested setting apart Rs. 75,000/- for the expenses, treating the balance sum of Rs. 72,000/- alone as nett profit; on this footing it was he says he was allowed Rs. 9,000/- as his share of the profits for the two years. The plaintiff admits he was never paid on the basis of the auditor's reports. If the agreement was to pay a definite share of the profits it is certainly strange that rough figures should have formed the basis for arriving at plaintiff's share of the profits when exact figures would have been readily available. What is more the deduction of Rs. 17,000/- for the year 1940-1941 and of a very much larger and disproportionate sum of no less than Rs. 75,000/- for the next two years 1941-42 and 1942-43 on account of expenses has not been satisfactorily explained.

I find it difficult to believe that at least in regard to the years 1941-42 and 1942-43 the plaintiff would have been agreeable to waive, for that is what the plaintiff's action amounts to, a large part of his share of the profits merely because the 1st defendant suggested setting apart without a proper accounting on account of expenses such a large sum of Rs. 75,000/- by the simple pretext of an allusion to overhead charges, bonuses, dearness allowance, excess profits duty and the poor profit shown by the textile department. The plaintiff was totally unconcerned with the fortunes of the textile department; overhead charges, bonuses and dearness allowance

were legitimate expenses and would not have eaten up more than a part of Rs. 75,000/-. So far as excess profits duty was concerned the share of profits paid to the plaintiff would have had to be regarded as expenses as he was an employee remunerated by reference to profits earned. Plaintiff's story is quite unconvincing.

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The 1st defendant, however, says that as the plaintiff was a very hard-working and efficient officer the partners decided to give him in view of the profits earned a bonus out of the ordinary and that they had agreed towards the end of 1940 to give him something like Rs. 5,000/- although that figure was not specifically fixed or communicated to the plaintiff. On the 4th January 1941, in the absence of the 1st defendant, the plaintiff applied to the 2nd defendant for an advance not against bonus or commission or profit but by way of loan and the 2nd defendant having in mind the talk with the 1st defendant in regard to the valuable services of the plaintiff being suitably rewarded gave the plaintiff a cheque for Rs. 2,500/- and without giving sufficient heed made an erroneous endorsement on P2 to the effect that it was 'advance against commission.' Under date 31st March, 1941, the plaintiff is credited with a sum of Rs. 5,000/- by way of bonus but the entry must have been made somewhere in June or July after the balance sheet of the firm had been prepared for purposes of income tax. The plaintiff has thereafter been paid the balance of the bonus on the 14th July, 1941 (vide P5).

1st defendant also says that having regard to the profits earned during the year 1941-42 the plaintiff was similarly given a bonus of Rs. 5,000/- which was credited to him under date 31st March, 1942. In regard to the year 1942-43 however he says that the profits were not so very satisfactory and that they allowed the plaintiff a sum of Rs. 4,000/-. The 1st defendant does not admit that the profits for the two years 1941-42 and 1942-43 were aggregated for determining the bonus to be paid to the plaintiff.

That the plaintiff's statement that the profits of the two years were accounted together is not supported by the defendants' books for the credit entry of Rs. 5,000/- was made certainly in 1942 even before the close of the financial year 1942-43. The accuracy of the defendants' books has not been challenged, books kept by regular staff in the ordinary course of business. Why does the plaintiff then desire to lump the profits for the two years 1941-42 and 1942-43? The appellants contend that if the profits were dealt with separately the plaintiff would find himself in serious difficulties in having to explain how Rs. 5,000/- for the first year and Rs. 4,000/- for the next year were arrived at. Even if on the basis of the profits of Rs. 106,000/- for the year 1941-42 the plaintiff were minded to suggest that the sum in excess of Rs. 40,000/- namely Rs. 60,000/- odd was set apart for expenses etc. he would not be liable to show how out of a profit of Rs. 40,900/- he came to be paid Rs. 4,000/-, for if any margin on account of expenses in proportion not necessarily to the year 1941-42 but to the year 1940-41 was allowed he would not have been entitled to Rs. 4,000/-, and hence the plaintiff's attempt at massing the profits for the two years.

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It is contended on behalf of the appellants that what the plaintiff has done is to have got hold of the figures and worked backwards adopting the simple expedient of treating all sums in excess of that required to account for the amount paid to him as deductions made on account of expenses etc. The entries in the books of account P4 and P5 certainly support the case of the defendants for the facts must not be lost sight of that for purposes of income tax—the returns being made annually—the bonuses for the years 1941-42 and 1942-43 would have been included in the returns for the respective years by June or July, as bonus paid to employees would be claimed by the defendants, even as the plaintiff himself admits, as part of the expenses incurred in carrying on their business. I cannot accept the plaintiff's statement that there was a common accounting for the two years 1941-42 and 1942-43. It is true however that the bonus for the years 1941-42 and 1942-43 remained unpaid till 30th October, 1943 but nothing turns on it.

It seems to me that the plaintiff became dissatisfied with the bonus of Rs. 4,000/- allowed to him for the year 1942-43 when he became aware of it about the time of the payment. According to the plaintiff, towards the end of 1943 he made a request for a higher salary urging that he had been offered a job in India on very attractive terms. He says that he wanted Rs. 500/- by way of salary with dearness allowance and the *usual commission* and the 1st defendant agreed to his terms, but as regards the payment of dearness allowance the evidence is not clear. The 1st defendant however says that the plaintiff told him that as living expenses had gone up and as he was having an addition to his family every year a bonus was no security and suggested that he should be paid a commission instead. The 1st defendant says he considered the matter and offered him a salary of Rs. 400/- without bonus and without dearness allowance. The plaintiff however wanted him to make it Rs. 500/- to which the 1st defendant agreed. This salary, it is agreed, was to be effective from January, 1944.

In considering these two versions there is one important admission made by the plaintiff which has a great bearing on them. The plaintiff says that *at the time he asked for an increase in salary the profits were not so big because there was trouble in the office and business was affected*. Now, considering the two versions in the light of this fact it is clear that the 1st defendant's version is more acceptable. The plaintiff has had his bonus reduced to Rs. 4,000/- for the year 1942-43. In the year 1943-44 he did not think the firm was making large profits; a further reduction in the bonus was not improbable; dependence on bonus was indeed no security at all. Would he not in those circumstances have thought that it would be to his advantage to convert an indefinite and uncertain bonus for something definite and certain in the form of an assured salary? It seems to me that that is precisely what did take place.

The plaintiff was in receipt of a sum of Rs. 150/- a month together with dearness allowance which according to the 1st defendant (Vide answer

filed) was Rs. 1,200/- for a period of thirty months or Rs. 40/- a month. The plaintiff did however say that he was getting Rs. 150/- once in three months by way of dearness allowance but there is no reason to doubt that the statement of the defendants is the more correct one. The learned Judge has in the course of his judgment referred to the payment of a sum of Rs. 100/- a month as dearness allowance; that is erroneous. The plaintiff was therefore receiving by way of salary and dearness allowance Rs. 190/- a month. To this sum must be added the bonus of Rs. 4,000/- allowed to him for the year 1942-43 which works out to about Rs. 333/- a month; on this basis his monthly income would have been Rs. 523/- but the continuity of this was uncertain. Is there anything improbable then in the plaintiff being satisfied with Rs. 500/- a month which was a certain salary payable at the end of each month? The conduct of the parties thereafter also supports the 1st defendant's version. The plaintiff in fact was paid no dearness allowance from January 1944. It is also not without significance that in the books of account for the year 1943-44 no entry of a bonus appears nor has he been given an advance in anticipation of a bonus being paid to him. If in fact the defendants had agreed to continue to pay the bonus or to pay commission they would not have failed to have included these items in their books as it would have been to their interest to do so as these sums would form the subject of legitimate deductions for the purpose of arriving at the profits on which income tax would have to be paid. By June or July 1944 with the preparation of the balance sheet for purposes of income tax and the closing up of accounts in the books of the firm the plaintiff must have become aware that the firm did not do so badly after all during the year 1943-44 for according to the 1st defendant the profits were Rs. 77,000/- and must naturally then have felt that he had changed his position for worse by accepting the salary of Rs. 500/- foregoing both bonus and dearness allowance; for if the bonus of Rs. 5,000/- paid to him when the profits were only Rs. 57,000/- was restored, he would have been at least to the good to the extent of Rs. 1,000/- for the year. The 1st defendant says that in fact in August or September 1944 the plaintiff wanted him to pay commission in addition to the enhanced salary but that he 'flatly refused' and that it was on this occasion that the plaintiff tendered his resignation. In these circumstances it is difficult to resist the view that the 1st defendant's account of the conversation between him and the plaintiff is nearer the truth than that of the plaintiff.

In the light of the above facts the terms of the plaintiff's letter D1 become quite understandable. There was no agreement at any time to pay a share of the profits. Plaintiff had been paid substantial sums by way of bonus which ceased from 1st April, 1943. His increase in salary took effect from January, 1944. Plaintiff felt himself unfairly treated when he was refused the commission. Plaintiff may then have felt morally justified in putting forward a claim. How was he to formulate it? On the basis of a bonus he never could succeed as the very term implies it would be a payment dependant on the benevolence of the employer.



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A commission as understood in trade, namely a commission on sales, would have been equally out of the question for he would have had to establish the extent of the sales and the rate of commission in respect of each of the previous years and evolve some uniform principle if one could be found by which he could satisfy a tribunal that the payments of Rs. 5,000/- during each of the years 1940-41 and 1941-42, and Rs. 4,000/- during 1942-43 did represent commission on a percentage basis. Commission, as both the plaintiff and the 1st defendant say, would be paid on the gross sales. 1st defendant's evidence on this point has to some extent been misunderstood by the learned District Judge. 1st defendant does not say<sup>10</sup> that the firm's broker was paid a commission on profits. It was in cross-examination that the terms of the broker's employment were gone into. The 1st defendant stated unequivocally that the broker got a salary of Rs. 150/- and a commission on sales. 1st defendant went on to say further that the broker sometimes got 1/8 of the profits which amounted to 3/8 per cent. or 1/2 per cent. This was an answer given in reply to a leading question eliciting information as to what the commission would amount to calculated on the basis of a share of the profits. I think this is the proper view of the evidence for it is well known that a broker is entitled to commission on sales put through and is not concerned with the profits or losses<sup>20</sup> the seller makes or sustains.

To return to the question of the claim based on commission the plaintiff would have found it well nigh impossible to get at the total of the sales, for it would have been no easy task even with the willing assistance of the book-keeper. And assuming that the total of the gross sales could have been ascertained it would have been even more difficult to correlate the payments of the sums of Rs. 5,000/-, Rs. 5,000/- and Rs. 4,000/- referred to in the three years between 1940 and 1943 to the gross sales so ascertained. These difficulties apparently were not realised when the letters D1 and D2 were drafted which contain reference to commission<sup>30</sup> only. But when the claim had to be formulated on a definite basis it was then that it was apparently realised that it was not possible to put forward the claim on any basis other than that of a share of profits; and having regard to the profits earned a modification had to be made and that was accomplished by restricting the claim to a share of nett profits thus allowing a wide latitude to play about with irreconcilable figures.

I should now refer to the two documents P6 and P8. P6 is admitted by the 1st defendant to be in his handwriting but he denies that he gave it to the plaintiff. In regard to P8 1st defendant admits it is in the handwriting of Victoria who had been book-keeper of his firm, but denies that<sup>40</sup> it was he who gave it to the plaintiff. It is true that the 1st defendant was unable to explain the purpose or the circumstances under which he came to note down the figures on the slip of paper P6. It is dated June, 1941 and the defendant gave evidence in May, 1947, six years later. I do not think it a fair comment to make that as the witness has been unable to give an explanation therefore it necessarily follows that the witness was a witness of untruth. In regard to document P8 it would be noticed that it contains

not only the particulars for the years 1941-42 and 1942-43 but also the particulars in respect of the year 1940-41, a year in respect of which according to the plaintiff the profits had been paid as early as July, 1941. What need was there then for the figures for this year to be repeated? I think the explanation, as suggested by the appellants, is that the book-keeper, to put it mildly, who was out to oblige the plaintiff, noted the figures on P8 and handed the slip to him.

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—continued

It is also not without interest to note that during the course of his evidence the plaintiff was always tempted to refer to the amount he claimed as commission. At the very commencement of his examination in chief in referring to the conversation at which the agreement was reached he started by saying that he told the 1st defendant that he "should be given a commission not on the gross sales but on the nett commission earned by the department—I mean on the nett profits of the department." In re-examination too he could not shake off the idea of commission. Referring to the conversation in August or September, 1944, he says he asked 1st defendant for a commission. There are also other passages in his evidence where commission is the subject of his theme. It is only when the plaintiff's attention was particularly directed that he spoke of profits.

I now pass on to consider the contradictions which have formed the basis of adverse comments in regard to 1st defendant's veracity. I have already referred to the fact that the 1st defendant's failure to explain the circumstances under which P6 came to be noted by him cannot be regarded as a factor throwing doubt on his credibility. A second point in regard to which he has come in for adverse criticism is that he took up the position that the plaintiff had been sent to India in connection with the coffee transaction only. He had later however to admit that he had written letters to the plaintiff which clearly showed that the plaintiff was asked to interest himself on behalf of the firm in regard to a large number of other commodities. Now, these were letters written in 1942 after Japan had entered the Eastern theatre of war and the firm was as disclosed by the documents themselves prepared to deal in any line of goods regardless of the nature of the commodity; for every commodity had become scarce and supplies were difficult to obtain and any dealer who had the goods was able to make a large turnover. It is not disputed, however, that although the letters contain references to a large number of other commodities no transactions materialised in regard to any of them. It is a psychological phenomenon not incapable of explanation that what the memory retains is only what it is interested in and the rest passes into oblivion. Had business in regard to any of the other commodities been transacted by the defendants' firm one would have been justified in saying that the 1st defendant had deliberately set out to say what was not true, but I am not prepared to hold that in these circumstances an adverse inference should be drawn against the 1st defendant.

On behalf of the appellants it has been said that the plaintiff on the other hand is one who has not been slow to contort facts to suit his purpose.

No. 11  
Judgment of  
the Supreme  
Court  
25-4-49  
---continued

It is pointed out that the plaintiff asserted that it was the 1st defendant who wrote P2, the counterfoil of the cheque, for Rs. 2,500/- that was issued to him on 4th January, 1941, but it was only when he was confronted with the document that he modified his statement and admitted that it was the 2nd defendant who made that entry and that at a time when the 1st defendant himself was not in the office.

Another matter to which I should advert is as regards the inference that has been drawn in the lower Court from the failure of the 2nd defendant to give evidence. It is not the plaintiff's case that he discussed the terms of his employment with the 2nd defendant nor does he say that the agreement to pay a share of the profits was entered into with the 2nd defendant. The 2nd defendant it is true did enter up the counterfoil P2 but P2 shows only that the payment was on account of commission. But it is the case of neither party that commission was to be paid so that one cannot very well see what advantage would have been gained by calling 2nd defendant and the fact that he did not give evidence furnishes no ground for adverse comment on the defendant's case.

It now remains for me to consider the plaintiff's book of account P9. It is true that the book was marked as a documentary production but the plaintiff giving evidence drew the Court's attention to three particular entries, namely the entries of the 4th January, 16th July and 20th December, 1941, and he referred to the items in such a way as to indicate that they were innocuous so far as the defendants were concerned and did not carry the plaintiff's case further than the entries in the plaintiff's books of account did. He only stated that his book contained entries showing the monies he had drawn from the defendant firm. He did not point to any single word in any of those entries as supporting his case that payments were made on the basis of a share of profits or even as a commission.

Defendant's counsel in this manner of presentation of the evidence did not only appear to have been lulled into a sense of complacency but refrained from cross-examining the plaintiff on these items. In the course of the address, however, stress was laid not merely on the words of the particular entries referred to in the course of examination but also on an entry that was never before Court, namely the entry on the date 16th July, 1941 which reads "by amount received from B & De W towards commission for year 1st April, 1940 to 31st March, 1941 based on 1/8th share of a nett profit of Rs. 40,000/- for the sundry department: Rs. 5,000/-." It seems to me that if the plaintiff relied on this entry he should have drawn pointed attention to it when he was being examined and put the entry in as also an exhibit and given an opportunity to the defence to investigate the entry. The book itself was one which was kept for the purpose of another business and is said to be a ledger. No other book has been produced and the way the entries have been made use of do not inspire confidence. Having examined the book I cannot say that the book is of such a character that it commands any high degree of probative value. In any event the entries are self-serving ones even if it be assumed that the book was written in the

ordinary course of business. If these entries had been made on the dates under which they appear it certainly passes strange that the plaintiff was unable to formulate more specifically his claim in the documents D1 and D2. I do not place any great reliance on the entries in plaintiff's book and certainly they are totally inadequate to outweigh all the other factors in the case.

No. 11  
Judgment of  
the Supreme  
Court  
25-4-49  
—continued

Having regard to all these various considerations I accept the 1st defendant's evidence and hold that the plaintiff's action is a speculative one and has been built on the quicksands of half truths and mutilated facts and must of necessity fail. I would therefore set aside the judgment of the learned District Judge and dismiss the plaintiff's action in excess of Rs. 500/- with costs both in this Court and in the Court below.

Sgd. C. NAGALINGAM,  
*Puisne Justice.*

GUNASEKARA, J.  
I agree.

Sgd. E. H. T. GUNASEKARA,  
*Puisne Justice.*

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**No. 12**

**Decree of the Supreme Court**

No. 12  
Decree of  
the Supreme  
Court  
25-4-49

20 GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,  
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, KING,  
DEFENDER OF THE FAITH.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

SUPREME COURT (FINAL) 441 OF 1948

MOHAMED AKBAR ABDUL SATHAR of "Jeelani" 2nd Division,  
Maradana in Colombo.....*Plaintiff-Respondent.*

*against*

1. W. L. BOGTSTRA and
2. H. DE WILDT both carrying on business in partnership  
30 under the name style and firm of "Bogtstra and De Wildt" at  
Australia Buildings, Fort, Colombo.....*Defendants-Appellants.*

Action No. 16684.

In the District Court of Colombo.

This cause coming on for hearing and determination on the 7th and 25th days of April, 1949, and on this day, upon an appeal preferred by the defendants before the Hon. Mr. C. Nagalingam, K.C., Puisne Justice and the Hon. Mr. E. H. T. Gunasekara, Puisne Justice of this Court, in the presence of Counsel for the appellants and respondent.

No. 12  
Decree of  
the Supreme  
Court  
25-4-49  
—continued

It is considered and adjudged that the judgment entered in this action by the District Court of Colombo be and the same is hereby set aside.

The plaintiff's action in excess of Rs. 500/- is dismissed with costs both in this Court and in the Court below.

Witness the Hon. Mr. Edwin Arthur Lewis Wijeyewardene, K.C., Chief Justice, at Colombo, the 25th day of April, in the year of our Lord One thousand Nine hundred and Forty-nine and of Our Reign the Thirteenth.

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

No. 13  
Petition for  
Conditional  
Leave to  
Appeal to  
the Privy  
Council  
23-5-49

**No. 13**

10

**Petition for Conditional Leave to Appeal to the Privy Council**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

MOHAMED AKBAR ABDUL SATHAR of "Jeelani Manzil"  
2nd Division, Maradana, Colombo.....*Plaintiff-Respondent.*

*vs.*

1. W. L. BOGTSTRA, and
2. H. DE WILDT, both carrying on business in partnership, under the name style and firm of "Bogtstra and De Wildt" at Australia Buildings, Fort, Colombo.....*Defendants-Appellants.*

MOHAMED AKBAR ABDUL SATHAR of "Jeelani Manzil" 20  
2nd Division, Maradana, Colombo.....*Plaintiff-Appellant.*

*and*

1. W. L. BOGTSTRA, and
2. H. DE WILDT, both carrying on business in partnership, under the name style and firm of "Bogtstra and De Wildt" at Australia Buildings, Fort, Colombo.....*Defendants-Respondents.*

*To*

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

The petition of the abovenamed plaintiff-appellant appearing by 30  
A. C. M. Abdul Cader, his Proctor states as follows :—

1. That feeling aggrieved by the judgment and decree of this Honourable Court pronounced on the 25th day of April, 1949 the plaintiff-appellant is desirous of appealing to His Majesty the King in Council.

No. 13  
Petition for  
Conditional  
Leave to  
Appeal to  
the Privy  
Council  
23-5-49  
—continued

2. That the said judgment is final judgment and the matter in dispute on the appeal is of the value of over five thousand rupees and involves a question respecting civil rights of the value of over five thousand rupees.

3. That notice of the intended application for leave to appeal copy of which is filed of record was served on the respondents in terms of Rule 2 of the Rules in the Schedule to the Appeals (Privy Council) Ordinance (Chapter 85) on the 9th day of May 1949, through the Fiscal Western Province by affixing the said Notices on the home and office addresses of the respondents as per affidavit of the Fiscal's Officer filed of record in these proceedings in accordance with the Order of your Lordship's Court dated 9-5-49.

4. Notice of the intended application for leave to appeal was also given to the respondents' Proctor on record Mr. John Wilson and the petitioner produces a motion duly signed by Mr. John Wilson marked "M".

5. Copy of the Notice of the intended application for leave to appeal marked "P" was further sent by registered post to the respondents' home and office addresses and in proof of this the petitioner produces his affidavit.

Wherefore the plaintiff-appellant prays for Conditional Leave to Appeal against the judgment and decree of this Court dated 25th April, 1949 to His Majesty the King in Council.

Colombo this 23rd day of May, 1949.

Sgd. A. C. M. A. CADER,  
*Proctor for Petitioner (Plaintiff-Appellant).*

**No. 14**

**Decree of the Supreme Court granting Conditional Leave to Appeal**

No. 14  
Decree of  
the Supreme  
Court  
granting  
Conditional  
Leave to  
Appeal  
25-5-49

30 GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,  
IRELAND, AND THE BRITISH DOMINIONS BEYOND THE SEAS, KING,  
10 DEFENDER OF THE FAITH.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

MOHAMED AKBAR ABDUL SATHAR of "Jeelani Manzil"  
2nd Division, Maradana, Colombo.....*Plaintiff-Appellant.*

*against*

1. W. L. BOGTSTRA and
2. H. DE WILDT, both carrying on business in partnership under the name style and firm of "Bogtstra and De Wildt" at Australia Buildings, Fort, Colombo.....*Defendants-Respondents.*

No. 14  
Decree of  
the Supreme  
Court  
granting  
Conditional  
Leave to  
Appeal  
25-5-49  
—continued

Action No. 16684.

District Court of Colombo.

In the matter of an application by the plaintiff abovenamed for Conditional Leave to Appeal to His Majesty the King in Council against the judgment and Decree of this Court dated the 25th April, 1949.

This matter coming on for hearing and determination on the 25th day of May, 1949, before the Hon. Mr. E. A. L. Wijeyewardene, K.C., Chief Justice and the Hon. Mr. E. H. T. Gunasekara, Puisne Justice of this Court, in the presence of Counsel for the appellant.

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 shall on application made after due notice to the other side approve :

(2) Deposit in terms of the provisions of section 8 (a) of the Appellate Procedure (Privy Council) Order with the Registrar a sum of Rs. 300/- in respect of fees mentioned in section 4 (b) and (c) of Ordinance No. 31 of 1909 (Chapter 85).

20

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. Mr. Edwin Arthur Lewis Wijeyewardene, K.C., Chief Justice, at Colombo, the 25th day of May, in the year of our Lord One thousand Nine hundred and Forty-nine and of Our Reign the Thirteenth.

Sgd. W. G. WOUTERSZ,  
*Acting Deputy Registrar, S.C.* 30

## No. 15

**Petition for Final Leave to Appeal to the Privy Council**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

MOHAMED AKBAR ABDUL SATHAR of "Jeelani Manzil",  
2nd Division, Maradana, Colombo.....*Plaintiff-Respondent.*

*vs.*

1. W. L. BOGTSTRA and
2. H. DE WILDT, both carrying on business in partnership  
under the name style and firm of "Bogtstra and De Wildt"  
10 at Australia Buildings, Fort, Colombo.....*Defendants-Appellants.*

D. C. Colombo Case No. 16684.

S. C. No. 441.

MOHAMED AKBAR ABDUL SATHAR of "Jeelani Manzil",  
2nd Division, Maradana, Colombo.....*Plaintiff-Appellant.*

*and*

1. W. L. BOGTSTRA, and
2. H. DE WILDT, both carrying on business in partnership  
under the name style and firm of "Bogtstra and De Wildt"  
at Australia Buildings, Fort, Colombo.....*Defendants-Respondents.*

20 On this 22nd day of June, 1949.

The humble petition of the plaintiff-appellant abovenamed appearing by A. C. M. Abdul Cader, his Proctor showeth as follows :—

1. That the plaintiff-appellant on the 25th day of May, 1949 obtained Conditional Leave from this Honourable Court to appeal to His Majesty the King in Council against the judgment of this Court pronounced on the 25th day of April, 1949.

2. That the plaintiff-appellant has in compliance with the conditions on which such leave was granted has :—

(a) On the 22nd day of June, 1949 deposited with the Registrar of  
30 this Court the sum of Rs. 3,000/- being the security for costs of appeal under Rule 3 (a) of the Schedule Rules and hypothecate the said sum of Rs. 3,000/- by Bond dated 22nd day of June, 1949 for the due prosecution of the appeal and the payment of all costs that may become payable to the respondents in the event of the plaintiff-appellant not obtaining an order granting him Final Leave to Appeal or of the appeal being dismissed for non-prosecution or of His Majesty in Council ordering the plaintiff-appellant to pay the defendants-respondents costs of appeal, and

(b) On the 22nd day of June, 1949 deposited the sum of Rs. 300/- in  
40 respect of the amounts and fees as required by paragraph 8 (a) of the Appellate Procedure (Privy Council) Order 1921 made under Section 4 (1) of the aforesaid Ordinance.



No. 15  
Petition for  
Final Leave  
to Appeal to  
the Privy  
Council  
22-6-49  
---continued

Wherefore the plaintiff-appellant prays that he be granted Final Leave to Appeal against the said judgment of this Court dated the 25th day of April, 1949 to His Majesty the King in Council.

Sgd. A. C. M. A. CADER,  
*Proctor for Plaintiff-Appellant.*

No. 16  
Decree of the  
Supreme  
Court  
granting  
Final Leave  
to Appeal  
27-6-49

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**No. 16**

**Decree of the Supreme Court granting Final Leave to Appeal**

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,  
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, KING,  
DEFENDER OF THE FAITH. 10

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

MOHAMED AKBAR ABDUL SATHAR of "Jeelani Manzil",  
2nd Division, Maradana, Colombo.....*Plaintiff-Appellant.*

*against*

1. W. L. BOGTSTRA and
2. H. DE WILDT, both carrying on business in partnership under the name style and firm of "Bogtstra and De Wildt" at Australia Buildings, Fort, Colombo.....*Defendants-Respondents.*

Action No. 16684 (S. C. No. 441 Final). District Court of Colombo.

In the matter of an application by the plaintiff abovenamed for Final Leave to Appeal to His Majesty the King in Council against the decree of this Court dated 25th April, 1949.

This matter coming on for hearing and determination on the 27th day of June, 1949 before the Hon. Sir E. A. L. Wijeyewardene, Kt., K.C., Chief Justice and the Hon. Mr. A. R. H. Canekeratne, K.C., Puisne Justice of this Court, in the presence of Counsel for the appellant.

The applicant having complied with the conditions imposed on him by the order of this Court dated 25th May, 1949 granting Conditional Leave to Appeal.

It is considered and adjudged that the appellant's application for Final Leave to Appeal to His Majesty the King in Council be and the same is hereby allowed.

Witness the Hon. Sir Edwin Arthur Lewis Wijeyewardene, Kt., K.C., Chief Justice, at Colombo, the 27th day of June, in the year of our Lord One thousand Nine hundred and Forty-nine, and of Our Reign the Thirteenth.

Sgd. F. C. VAN CUYLENBERG,  
*Acting Registrar, S. C.*

**PART II.**  
**EXHIBITS**

Exhibits  
P 2  
Counterfoil  
of cheque  
4-1-41

**P 2 Counterfoil of Cheque**

**P 2.**

No. J 125410

Date 4-1-1941

Favour of M. A. A. Sathar  
Advance against Commission  
Rs. 2,500/-

**P 3 Receipt**

10 **P 3.**

BOGTSTRA & DE WILDT

COPY

P 3  
Receipt  
4-1-41

Received from M/s Bogtstra & De Wildt, Colombo, Hongkong Bank cheque No. J 1254140 of 4-1-41 for Rs. 2,500/- (two thousand five hundred) only as advance against my commission account.  
Colombo, 4-1-41.

**P 30 Letter**

**P 30.**

Colombo,  
11th January, 1941.

P 30  
Letter  
11-1-41

20 Dear Mr. Sathar,

I experienced some trouble with Mohamedally for the 50 cases Pilchards per s. s. "President Harrison". The goods have arrived, and now it appears that he has not provided for the licence yet, and is unable to buy it so far. The attitude he takes is not correct, as he turns round and says that on ordering, you promised him to obtain the licence, and therefore the mistake is ours and not his, and therefore he has got nothing to do with it. I had a talk with him this morning and have been trying to sell the lot elsewhere, however, the best price I can offer is 3/45 from Umbichy. The cost price is 3/75, so that the whole affair would cost him  
30 Rs. 50/- to be out of trouble. I made him understand that we have been selling to him C.I.F., and that I keep him entirely responsible for the bill, and that he has no grounds to put the responsibility on you. He has not accepted the offer of 3/45, but shall try again on Monday to obtain a licence. Licences are difficult to get, but are not unobtainable—if he is willing to pay the market price of 30%, he gets it. However, he finds 30% too high. You also will understand that the whole market knows that he has difficulty with the 50 cases, and wherever I come to offer his goods, they know at once that the goods are his, which influences the price.



						Exhibits
1940	Apr. 1	—	To Balance	....	130 47	P 4
1941	Jan. 4	—	Advance against Comm.	....	2,500 00	Page of Ledger 1938-1939 —continued
1940	May 1	—	By cash	....	10 00	
	June 1	—	„ cash	....	10 00	
	„ 29	—	„ cash	....	10 00	
	Aug. 31	—	„ cash	....	10 00	
10	Oct. 1	—	„ cash	....	10 00	
	Nov. 1	—	„ cash	....	10 00	
	„ 30	—	„ cash	....	10 00	
1941	Feb. 1	—	„ cash	....	10 00	
	March 1	—	„ cash	....	10 00	
	„ 31	—	„ cash	....	10 00	
	„ 31	—	„ Balance c/over N/L	F 79	.... 2,530 47	
					<u>2,630 47</u>	

**P 6. Statement of Profit and Loss Account**

20 **P 6**

June 1941 B & W

**1940 - 41**

Profit & Loss A/c.

51713 02	Profit Sundries	
5471 68	„ Sugar	
871 02	„ Coffee	
<hr/>		
58055 72		259 04
301 04		42 00
<hr/>		
57754 68		301 04
(57754 68)		
<hr/>		

P 6  
Statement  
of Profit  
and Loss  
Account  
1940-41

30

**P 7**

**P 7. Counterfoil of Cheque**

No. J 126265  
Date 14-7-1941

P 7  
Counterfoil  
of Cheque  
14-7-41

Favour of M. A. A. Sathar  
In settlement of his commission  
A/c Personal  
Rs. 2399/53

Exhibits  
P 9  
Pages of  
Day Book  
Jan. to Dec.  
1941

**P 9****P 9. Pages of Day Book**

Day Book  
(M. A. A. Sathar & Co.  
Diyatalawa)

1941	(Page 3)						
Jan. 4—	(M. A. A. Sathar) B & De W a/c						
	By cheque No. J 125410 of 4-1-41						
	of Hong Kong Bank from Messrs.						
	Bogtstra & De Wildt being part						10
	advance on commission due						
	(see note in Diary) ....						2500.00
1941	(Page 92)						
July 16—	M. A. A. Sathar						
	To Household exp.	3.30					
	„ Bus ticket	1.50	4.80				
	B & De W's a/c (M. A. A. S. a/c)						
	To amt. due on commission a/c						
	for the year 1st April 1940						
	to 31st March 1941 to						20
	M. A. A. Sathar ....			5000.00			
	By H'Kong bank cheque ....					2399.53	
	By 1 wrist watch ....					30.00	
	By amt due to B & W from M. A.						
	A. S. on Saree a/c (this						
	payment settles saree a/c ....						10.47
	M. A. A. Sathar						
	By amt received from B & De W						
	towards commission for year						
	1st April 1940 to 31st March						30
	1941 based on 1/8th share of						
	a nett profit of Rs. 40,000/-						
	for the Sundry department ....						5000.00
		x	x	x	x	x	x
		x	x	x	x	x	x
	(Page 153)						
1941							
Dec. 20—	B & De W's a/c						
	By Hongkong Bank cheque being						
	advance towards amount due to						
	me on profit for year 1941-42 ....						40
						500.00	
		x	x	x	x	x	x

P 10

**P 10. Pages of Cash Book**

Exhibits

Cash Book  
(Page 4)P 10  
Pages of  
Cash Book  
Jan. to Dec.  
1941**Payments**

1941

	Jany. 3	—	x	x	x	x	x	x	
			x	x	x	x	x	x	
	4	—	By a/c M. A. A. Sathar—Advance against commission						2500.00
10			x	x	x	x	x	x	
			x	x	x	x	x	x	

(Page 39)

**Payments**

1941

	July 14	—	By a/c M. A. A. Sathar—In settlement of commission						2399.53
			x	x	x	x	x	x	

(Page 67)

**Payments**

20 1941

	Dec. 20	—	By a/c M. A. A. Sathar—Advance against salaries						500.00
			x	x	x	x	x	x	

P 12

**P 12. Pages of Salary & Bonus Book**P 12  
Pages of  
Salary &  
Bonus Book  
1941-42

(Page X)

**December—1941**

	1.	M. A. A. Sathar	....	150.00
	2.	K. Karalasingham	....	125.00
	3.	Miss B. Wickramatilleke	....	90.00
	4.	G. L. Rode	....	75.00
30	5.	X. Victoria	....	65.00
	6.	M. S. Cooray	....	55.00
	7.	Miss E. Fernando	....	50.00
	8.	H. R. H. Karunatilleke	....	30.00
	9.	B. L. Paulis	....	30.00
	10.	M. H. M. Mohideen	....	30.00
	11.	R. S. Perera	....	25.00
	12.	S. Adumay	....	25.00
	13.	N. W. W. Wickramasinghe	....	22.50
				<u>772.50</u>

Rupees Seven Hundred and seventy two and cents fifty only.

## Exhibits

P 12  
Pages of  
Salary &  
Bonus Book  
1941-42  
—continued

**X'mas Bonus for 1941**

1.	M. A. A. Sathar	....	150.00
2.	K. Karalasingham	....	125.00
3.	Miss B. Wickremetilleke	....	90.00
4.	G. L. Rode	....	75.00
5.	X. Victoria	....	65.00
6.	M. S. Cooray	....	55.00
7.	Miss E. Fernando	....	50.00
8.	H. R. H. Karunatilleke	....	30.00
9.	B. L. Paulis	....	30.00
10.	M. H. M. Mohideen	....	30.00
11.	R. S. Perera	....	25.00
12.	S. Adumay	....	25.00
13.	N. W. W. Wickremesinghe	....	22.50
14.	Paktsun	....	20.00
15.	E. W. Siriwardene	....	30.00
16.	K. Sadyan	....	30.00
			<u>852.50</u>

10

Rupees Eight hundred and fifty two and cents fifty only

(Page Y)

20

**X'mas Bonus for 1942**

1.	Miss B. Wickremetilleke	....	90.00
2.	G. L. Rode	....	75.00
3.	X. Victoria	....	65.00
4.	Miss E. Fernando	....	60.00
5.	M. S. Cooray	....	55.00
6.	E. W. Siriwardene	....	50.00
7.	B. L. Paulis	....	35.00
8.	V. Subramaniam	....	30.00
9.	S. Adumay	....	25.00
10.	M. S. Seedin	....	15.00
11.	K. Sadyan	....	40.00
			<u>540.00</u>

30

Rupees Five hundred and forty only

**November 1942**

1.	Miss B. Wickremetilleke	....	90.00
2.	G. L. Rode	....	75.00
3.	X. Victoria	....	65.00
4.	Miss E. Fernando	....	60.00
5.	M. S. Cooray	....	55.00
6.	E. W. Siriwardene	....	50.00
7.	B. L. Paulis	....	35.00
8.	V. Subramaniam	....	30.00
9.	S. Adumay	....	25.00
10.	M. S. Seedin	....	15.00
			<u>500.00</u>

Rupees Five hundred only  
(Page Z)

**March 1942**

1.	M. A. A. Sathar	....	150.00
2.	K. Karalasingham	....	125.00
3.	Miss B. Wickremetilleke	....	90.00
4.	G. L. Rode	....	75.00
5.	X. Victoria	....	65.00
6.	M. S. Cooray	....	55.00
7.	Miss E. Fernando	....	50.00
8.	H. R. H. Karunatilleke	....	30.00
9.	B. L. Paulis	....	30.00
10.	V. Subramaniam	....	30.00
11.	R. S. Perera	....	25.00
12.	S. Adumay	....	25.00
13.	N. W. W. Wickremesinghe	....	25.00
			<u>775.00</u>

Rupees seven hundred & seventy five only

**March 20th—Extra month's salary**

1.	M. A. A. Sathar	....	150.00
2.	K. Karalasingham	....	125.00
3.	Miss B. Wickremetilleke	....	90.00
4.	G. L. Rode	....	75.00
5.	X. Victoria	....	65.00
6.	M. S. Cooray	....	55.00
7.	Miss E. Fernando	....	50.00
8.	H. R. H. Karunatilleke	....	30.00
9.	B. L. Paulis	....	30.00
10.	R. S. Perera	....	25.00
11.	S. Adumay	....	25.00
12.	N. W. W. Wickremesinghe	....	25.00
13.	K. Sadyan	....	35.00
14.	E. W. Siriwardene	....	30.00
			<u>810.00</u>

Rupees eight hundred & ten only

Exhibits

P 12  
Pages of  
Salary &  
Bonus Book  
1941-42  
—continued

10

20

30

40



(Page Z1)

Exhibits  
 P 12  
 Pages of  
 Salary &  
 Bonus Book  
 1941-42  
 —continued

**X'mas Bonus for 1940**

1.	M. A. A. Sathar	....	135.00	
2.	K. Karalasingham	....	112.50	
3.	Miss B. Wickremetilleke	....	81.00	
4.	M. E. Vander Straaten	....	67.50	
5.	G. L. Rode	....	67.50	
6.	M. S. Cooray	....	49.50	
7.	Miss E. Fernando	....	45.00	
8.	H. N. John	....	40.00	10
9.	H. R. H. Karunatilleke	....	30.00	
10.	X. Victoria	....	30.00	
11.	B. L. Paulis	....	30.00	
12.	R. S. Perera	....	25.00	
13.	S. Adumay	....	25.00	
14.	C. A. D. Boozzer	....	22.50	
15.	K. Sadiam	....	30.00	
16.	Aboobucker	....	10.00	
			<u>800.50</u>	
17.	A. Gomesz	....	80.00	20
			<u>880.50</u>	

Rupees Eight hundred & eighty and cents fifty only

P 8  
 Statement  
 of Account  
 (Undated) P. 8

**P 8 Statement of Account****SUNDRIES**

1940-41	51713.00
1941-42	80843.00
1942-43	11268.00

**SUGAR**

1940-41	5471.00
1941-42	24288.00
1942-43	27657.00

**COFFEE**

1940-41	871.00
1941-42	1237.00

**INDIAN COFFEE**

1942-43	2058.00
---------	---------



Exhibits  
 D 5  
 Page from  
 Journal  
 1941-1943

**D 5. Page from Journal**

Journal

(Page 91)

1941

March 31	Profit & Loss A/c				5000.00		
	To M. A. A. Sathar						5000.00
	Being bonus to latter for the						
	period to 31st March						
	x	x	x	x	x	x	

(Page 136)

10

1942

March 31	Salaries a/c				5000.00		
	To M. A. A. Sathar						5000.00
	Being bonus to latter for the						
	period to 31st March, 1942						
	x	x	x	x	x	x	
	x	x	x	x	x	x	

(Page 157)

1943

March 31	Salaries A/c				4000.00		
	To M. A. A. Sathar						4000.00 <sup>20</sup>
	Being bonus to latter for the						
	period to 31st March 1943						
	x	x	x	x	x	x	
	x	x	x	x	x	x	
	x	x	x	x	x	x	

**P 13. Letter**

Exhibits

**P 13**Colombo,  
6th July 1942.P 13  
Letter  
6-7-42M. A. A. Sathar Esq.,  
C/o Messrs. Esmail & Co.,  
Station Road,  
Tanjore.

Dear Sir,

We are in receipt of your letter of the 17th ultimo. We further  
10 received your telegram of the 4th instant.

As regards Rice, you might have seen the local papers that some difficulties have arisen, and that a new Assistant Trade Commissioner had been sent to Bombay together with one of the Government Auditors. If you could make certain of shipments of rice from South India, please send us samples and approximate C.I.F. quotations.

*Gunny Bags*:—We note that you write, and if you can manage to come to business, we are prepared to take it up, as there is also a great demand for this article as well for Jute Hessian. The difficulty of course is to get goods to Colombo.

20 *Paint & Shellac*:—The best thing is to visit the factory in Mysore and try if we can get a sole agency for Ceylon.

*Confectionery*:—Same as above, there is demand for it.

*Cement*:—If we can get Cement from Dalmia, so much the better.

*Sugar*:—I do not think there is any use of your trying to buy sugar or make sugar connections, as Government is going to buy all the required sugar themselves. We are of course at liberty to import it, but to bring it into our stores, we have got to pay a high war-risk insurance and import duty. Government brings the goods out without paying the war-risk insurance, and sells it to us free of import duty. So importing of this  
30 commodity is for importers at present impossible.

*4711*:—India must obtain goods from the factory at Slough. We shall consider sending a direct cable to Slough. The price however for 2 oz. quoted by you seems to us very high, and we doubt whether business at such high rates can be done here.

*White Coconut Oil & Arecanuts*:—We are working same, and if freight is available we shall cable you C.I.F. quotations for these commodities tomorrow.

*Licence—Caxton*:—We found in the file a receipt for which they signed having received 2 licenses back from us, and I think these are the  
40 required licences. I shall inform them accordingly.

Exhibits  
P 13  
Letter  
6-7-42  
—continued

*Letter of Introduction & Travelling Expenses*:—As transport difficulties seem to increase as well as prices for all commodities, we have been considering of asking you to come back to Colombo and postpone this trip altogether or till some time later. However, the market here is good for practically everything, and after the receipt of your telegram, we have therefore decided to let you make this trip. The market here is more or less bare of all commodities and you can look round in India and make us offers for various lines. We have heard that there are plenty of stocks in Bombay. We shall ask the Bank this afternoon to get a letter of introduction for their Indian Offices, and we shall remit to you Rs. 700/- tomorrow. On receipt of the money, we request you to proceed at once and let us have your full reports of your investigations.

Yours faithfully,  
BOGTSTRA & DE WILDT.  
Sgd. Illegibly.  
Partner.

P 14  
Letter  
7-7-42

#### P 14. Letter

P. 14

Colombo,  
7th July, 1942.

20

M. A. A. Sathar Esqr.,  
C/o Messrs. Esmail & Co.,  
Station Road,  
Tanjore.

Dear Sir,

In continuation of our letter of yesterday's date, we cabled you last night, as per copy enclosed herewith, quoting for Arecanuts C.I.F. Tuticorin.

As regards Coconut Oil, this is a controlled article, and we first must obtain Government permission for export before we can be able to quote.

As regards space to Tuticorin, we have learnt that same is probably regularly available. You can perhaps find out at your end whether the same freight facilities exist from Tuticorin to Colombo. War-risk from Colombo to Tuticorin is 6%.

Yours faithfully,  
BOGTSTRA & DE WILDT.  
Sgd. Illegibly.  
Partner.

P. S.

I am enclosing herewith a letter addressed to you by Proctor M. J. Peeris, Bandarawela, and I replied him that I have sent the letter on to you, asking you to reply to it. It is of course understood that under the present circumstances, as far as Highland Stores are concerned, I am absolutely against committing myself to buy this property or a portion thereof.

**P 15. Letter**

Exhibits

**P 15**Colombo,  
23rd July, 1942.P 15  
Letter  
23-7-42M. A. A. Sathar Esqr.,  
C/o Messrs. Esmail & Co.,  
Station Road,  
Tanjore.

Dear Sir,

We are in receipt of your telegram of the 22nd instant, and as  
10 requested we have cabled this morning to the Coffee Marketing Board in  
Bangalore as suggested by you.

Last week we received samples of Ragi and Kambu from M. S. P.  
Senthikumara Nadar & Sons, which they offered us subject their being able  
to obtain an export licence. We cabled them that we were interested in  
5000 bags Kambu and 5000 bags Ragi. Also we cabled them that we were  
interested in 50 tons Coffee. Most probably you have heard from them to  
this effect, if not this letter serves to make you acquainted with our actions.  
We do not think that they will be able to obtain an export licence for  
5000 bags each, however, let them try for as many bags as they can, and if  
20 successful, we rely on receiving soonest possible their quotations.

We hope you will succeed in Bangalore to obtain a permit for Coffee.  
This commodity is getting scarce here. We shall try to communicate with  
our friends in Mombasa and see whether they can find space and Coffee  
for Ceylon.

As regards your further trip to India, as suggested at the time, please  
let us know whether you think it advisable to continue. We notice that it  
is very difficult to obtain export permits, and then it might be of no use to  
make such an expensive trip. At any rate, we are still in favour of your  
going on this trip, but would like to have your opinion by return air mail.

30 We have heard that cargo from Calcutta has been sent to Bombay for  
shipment from that port, and we are trying to buy as a trial 50 bales Jute  
Hessian in Bombay to be shipped to Colombo. The War risk Insurance  
Bombay/Colombo and *vice versa* has been reduced to 7½%.

Just now we received a telegram from Abdul Sakoob Tayoob in  
Mangalore, asking for quotations for Arccanuts C.I.F. Tuticorin or C.I.F.  
Bombay. We shall send them a quotation tomorrow. The local price is  
gone up and so has the freight. So I think the price will work out a bit  
higher than what we quoted you last.

40 We think it advisable that you remain at present in South India and  
try to obtain export permits for various commodities for Ceylon. Please  
let us have your opinion by return Air Mail.

Yours faithfully,  
BOGTSTRA & DE WILDT  
Sgd. Illegibly  
Partner.

Exhibits

**P 16 Letter**P 16  
Letter  
4-8-42**P 16.**Colombo,  
4th August, 1942.M. A. A. Sathar Esqr.,  
C/o Messrs. Ismail & Co.,  
Station Road,  
Tanjore.

Dear Sir,

We are in receipt of your letter of the 18th of July, from Bangalore, and thank you for your extensive report, which has had our good attention. 10

Your letter arrived here on the evening of the 31st and we were therefore not in a position to deal with it yesterday, when we cabled to the parties mentioned in your letter to send us best available quantities of coffee. As a matter of fact, Santhikumara Nadar and Sons are also working with coffee, and they required us to send a telegram to them a few days ago, but so far we have not heard anything yet from this party, and hope to receive better news from the others you have visited. In our telegram we have referred your visit to them. We cabled you yesterday that the local price for coffee is about Rs. 140/-, and we therefore think it quite possible that also other qualities of Coffee except flat Robusta might be 20 going in the market, as the position will become scarcer everyday.

We shall come back on your letter and deal with the other matters in one or two days' time.

Yours faithfully,  
BOGTSTRA & DE WILDT  
Sgd. Illegibly  
Partner.

**P 17. Telegram**P 17  
Telegram  
16-8-42**P 17**

INDIAN POSTS AND TELEGRAPHS DEPARTMENT 30

Colombo P. O. 15 13 20 16 Aug 42

Sathar Combatore

Coffee Trading Company

Colombo.

Coffee ryt 14th require polished present market Indian 180/ Java 210; at present advisable dont sell your end stop cabling remittance monday stop potatoes packing crates or bags import duty one rupee cwt control price 19/25 present market price 14/25 cwt stocks available.

BOGTSTRA &amp; DE WILDT.

**P 18. Telegram****P 18****INDIAN POSTS AND TELEGRAPHS DEPARTMENT**

Colombo P. O.

18 Aug 42.

Sathar Coffee Trading Co.

Senthikamaranadar telegraphs as follows  
telegraphs your lowest price for twenty five tons robusta which you bought  
from Coffee Controller stop we are not willing to sell our coffee reqd here.

BOGTSTRA &amp; DE WILDT.

Exhibits

P 18  
Telegram  
18-8-42

10

**P 20. Letter****P 20**

Colombo,

24th August, 1942.

**Per Air Mail**

M. A. A. Sathar Esqr.,  
Venkatesa Lodge,  
Coimbatore.

Dear Sir,

We have still to acknowledge receipt of your letters of the 18th and  
29th ultimo and 4th instant.

20 Copies of telegrams were exchanged, from which resulted that you  
have contracted for 45 tons of coffee of the various grades out of the 50 tons  
available for export to Ceylon for August. This coffee cost us Rs. 109/50  
in average, including water polishing and we estimate that the C.I.F.  
Colombo price will be about Rs. 115/- if the rate of insurance is not too  
high. Duty at -/20 cts. per lb., Wharf charges, cart hire etc. will come  
together to about Rs. 25/-, so that this coffee will cost us in our Stores  
about Rs. 140/-. The present price in Colombo is about Rs. 180/-  
to Rs. 190/-, so that the coffee can be sold at a reasonable margin  
provided no changes take place in the meantime. You should not  
30 lose sight of the fact that the possibility is not excluded of a  
price control, but this commodity being non-essential we do not think  
this will happen. We received your telegram informing us that you  
could sell 25 tons in South India at a profit of Rs. 20/- a cwt., and we  
also got a telegram from Senthikumara Nadar asking us at what price we  
would sell this coffee. Under the circumstances, however, we consider it  
better not to sell at your end, especially in view of the letter we have  
written to the Controller, informing him that we would try our level best to  
introduce Indian Coffee in Ceylon. We think that it would make rather a  
bad impression with the authorities at your end, if we should re-sell the  
40 coffee straight away after having bought from them, and as a matter of  
fact, our desire is to work up a market for Indian Coffee here, as we prefer  
a regular business instead of making some profit on one occasion.

P 20  
Letter  
24-8-42



Exhibits  
 P 20  
 Letter  
 24-8-42  
 —continued

As requested by you we remitted you Rs. 41,000/-, and from your telegram of the 22nd instant we saw that you have been paying Stanes and Leslie out of this. With our today's telegram we enquired when we have to pay the balance of this 45 tons and hope to receive your reply. We further noted from your telegram of the 22nd that you have been buying together with Iyernadar and Coffee Trading Company 180 tons of coffee of the various grades and that our share is 60 tons. You informed us that the average premium available at present is Rs. 2/- per cwt. with upward tendency, and that you intend starting to sell, however reserving 15 tons B for September export. 10

With our today's cable we informed you that we would prefer you to sell the 60 tons joint account as soon as possible, as you should not lose sight of the fact that we have also got our heavy financial engagements here in Colombo, and as we understood from your telegram that these 60 tons should have to be paid for on or before the 2nd proximo, we are of opinion that it is better to sell the 60 tons than for us to have to remit the price of same next week. As you perhaps know we are one of the nine prime distributors for selling Government sugar, and you will understand that we have got to pay cash for our stocks before taking delivery and we have regularly blocked 1½ to 2 lakhs of rupees on sugar. 20

Further, we have been doing so far a fair amount of business in grains, which also require monies, and then we had to reserve a lakh for the 45 tons coffee contracted for on our behalf by you, and you will understand that we have to take our financial position into consideration, and this is the reason why we should like you to sell the 60 tons joint account before the 2nd of September, which would relieve us of making a remittance for these goods, as we require the money here at present. Moreover, after the experience with our friend Aboobakar Joosub we are not so keen on joint account business. Further, we are not too keen nowadays to involve ourselves in one article, because one never knows what might happen. Suppose 30 a steamer from South America with coffee should take refuge in Colombo or for some other reason have to call here, and when such a steamer should carry coffee, the owners might sell it here finding a good market, and you will understand what would happen. We admit that such a possibility is remote, still it exists, and we have to take it into consideration.

*Ceylon September Export Pool Sales* :—We note that same has been fixed for the 29th instant, and you asked us to indicate to you our maximum bids. It is difficult for us to do and we have to rely on you. You are now aware what the market position is here. You can calculate our cost price for the August purchases delivered our Stores, which will 40 serve you as a guidance for this sale, and as said above we must entirely leave it to you. We shall keep you informed about the market, so that you have the latest reports.

*August Purchases* :—We would be obliged if you would let us know by what time we could expect the goods here.

A. Jafferjee and others have already been approaching us to sell them the coffee, but as things are now, we think it better to let the goods come here, and sell the goods from our stores.

Exhibits  
P 20  
Letter  
24-8-42  
—continued

We thank you for the addresses in Mangalore, Calicut etc. and we have been approaching these people. You will understand that we could not do any coffee business with them, nor could we give them any indication as to the market condition here. At any rate it is useful to have these addresses because in time to come we might establish connections for them for import and export.

10 *Coconut Oil or Copra for Mysore Soap Factory*:—It is not only sufficient these people have a certificate, but we must also get a permit before Millers are allowed to give us a quotation. Up till now we have been trying to get a permit, however, we have not succeeded, so far. No sooner we obtain a permit we shall cable quotations.

*Nanco Rubber Works, Coimbatore*:—We are certainly interested in this proposal especially as regards rebuilt motor tyres. Samples advised by you have not come yet and we shall write to these people direct. Business is certainly to be done.

As regards their requirements for crepe sheets, we are not certain  
20 whether we can supply them, as also this commodity is under Government control. Anyhow, we are investigating and shall report further.

*The Premier Traders—Slates & Chalks*:—As far as our investigations go there is still a sufficient quantity of slates in the market. You should not lose sight of the fact that with the closing of practically all the schools a few months ago, there has hardly been any demand for this article. As regards chalks, we think we shall ask them to send us one or two cases, as business is possible.

*Shark Liver Oil etc*:—We are certainly interested, and shall approach these people direct. As regards forward sales for old and new crops of  
30 coffee, as explained in your letter of the 29th ultimo, we are not much in favour to bind ourselves so long forward. Moreover, now the pool is tendering the coffee for Ceylon, and we do not think it is possible to contract forward.

*Mysore Government Soap Factory*:—If you could induce them to give us their agency after their having finished with Hector Mather and Co., we would certainly be very interested, and hope to hear further from you in this respect.

*Piece Goods*:—We are much obliged for the various addresses and quotations you have given us. However, we have not been able to make  
40 use of it, as there are strong rumours that piece goods will be controlled. The local press and the public are clamouring for it, and Government might have to give in. How is it possible to control the prices of various

P 20  
Letter  
24-8-42  
—continued

piece goods, which are at present in the market, is a puzzle to us, and when it should be instituted, the market will be upset for some time, and for that reason we first like to see what is going to happen before committing ourselves to buy. We have heard that if control sets in, it should be by about the end of this month.

*Chemicals* :—We cabled to New York, and no sooner quotations are in, we shall let you know.

We received just now from one Mr. Jabbar a telegram enquiring your whereabouts, and we have passed on this cable to you.

Yours faithfully, 10  
BOGTSTRA & DE WILDT  
Sgd. Illegibly  
Partner.

P 19  
Telegram  
25-8-42

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**P 19. Telegram**

**P 19**

INDIAN POSTS AND TELEGRAPHS DEPARTMENT

25 Aug. 42

Sathar Venkatesa Lodge Ryt 22nd having heavy financial obligations locally prefer your selling 60 tons joint account soonest however no objection reserving 15 tons B September stop difficult indicate limits for 20 next pool sales must leave your discretion shall wire local market position before 29th today market strong Jave 210/- Indian 190/- however few sales these prices stop cable when to remit balance for 45 tons August purchase.

BOGTSTRA DEWILDT.

P 21  
Telegram  
25-8-42

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**P 21. Telegram**

**P 21**

INDIAN POSTS AND TELEGRAPHS DEPARTMENT

To

25 Aug. 42

Sathar venkatesa lodge

Coffee prices controlled imports maximum price Rs. 1451 ex stores 30 maximum wholesale 1501 ex stores our cost your purchase about 142/50 if still possible re-sell at yours at profit.

BOGTSTRA DEWILDT.

**P 22. Telegram**

Exhibits

**P 22.**

INDIAN POSTS AND TELEGRAPHS DEPARTMENT.

P 22  
Telegram  
29-8-42

29 Aug. 42.

0 1705 COLOMBO P.O. 28-44 SATHAR REPRESENTATIVE  
BOGTSTRA DEWILDT CARE DEPUTY CONTROLLER  
OF COFFEE

INDIAN COFFEE MARKET

EXPANSION BOARD BANGALORE—

10 RYT 27TH 60 TONS INTERNAL

NO QUESTION NONCONFIDENCE BUT MUST  
CONSIDER FINANCING AND TAKING FORWARD  
RISK THESE UNCERTAIN TIMES STRONGLY  
ADVISE LIQUIDATE POSITION IMMEDIATELY,

BOGTSTRA DEWILDT.

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**P 23 Letter****P 23.**

Colombo,

P 23  
Letter  
24-9-42

24th Sept. 1942.

**Per Air Mail**

20 M. A. A. Sathar Esqr.,  
C/o Esmail Company,  
Station Road,  
Tanjore.

Dear Sir,

We still have to acknowledge receipt of your letters of the 23rd and 29th ultimo, and received in the meantime various telegrams sent by you, and from which we noted that you have further bought at the Auction sale of the 29th ultimo, 10 tons Robusta at Rs. 95/10 per cwt. ex bags works Chikmagalu and in the meantime we remitted you the amount of 30 Rs. 20,000 and understood that you have paid the purchase price of this parcel. We have now bought altogether 55 tons of coffee, of which 20 tons have already arrived so far, and though we fully realise the difficulties in finding transport for the balance coffee, we think it advisable that you send the goods here soonest possible, as we fear the market for export to Ceylon in South India will come down still further. Against our and your expectation, much more coffee has apparently been offered at your end for export to Ceylon, which has no doubt been the result of the very high prices obtainable for coffee before price control was instituted. We felt

Exhibits  
 P 23  
 Letter  
 24-9-42  
 —continued

that this would be the case, especially upon receipt of your information that you could buy licence for Ceylon, which originally was meant for the Persian Gulf, the high Ceylon prices must have been so attractive that everybody who was in possession of permits to other countries have been trying to convert same to export to Ceylon apparently with good results, and we therefore cabled you at the time that we were not interested in buying any further coffee on the sales of the 12th instant, and we have been very glad we have done so. Just before the arrival of our 20 tons, Volkarts received a consignment, another person received goods under the marks "R M", a Chinaman worked the market here offering at cheap<sup>10</sup> prices, saying that his goods are lying in Chilaw. In other words, though the coffee position was very scarce, a month ago there seemed to be plenty of stocks, and nobody was keen to buy, with the result that so far we have not succeeded in selling any coffee at the controlled price of Rs. 145/-. As a matter of fact, today the controlled price is not available. It seems that a lot of coffee must have been sent to India from here, which has not been known to the coffee board at yours. Senthikumara Nadar who received here 10 tons coffee, just on the day when control was instituted, has not been able to sell this small quantity in bulk, but had to dispose of same in lots of 1 and 2 cwts to the retail trade, and we do not know if today he has<sup>21</sup> sold everything. We have also heard that he has been giving small quantities to various people to keep it for his account, with instructions left behind to a broker to sell same in the black market, which existed shortly after control was instituted. It will not have helped them on as there is no black market for coffee now, and as explained before the control price of Rs. 145/- cannot be obtained. We do not know whether the above story about the Nadar is true, though it is not unlikely. He was very disappointed when the control price was instituted, and must have been trying everything possible to obtain a better price. You of course understand that it is our policy to absolutely abstain from any black market transac-<sup>30</sup> tions. The 20 tons Coffee we received from you work out exactly at Rs. 130/- delivered our Stores, so that the price of Rs. 145/- is after all not too bad. The difficulty just now is that we cannot obtain same at present, however, we have hopes that in a few days' time the situation might improve a little bit and for the following reason. Latiff, Abubacker Joosub's son told us yesterday that Adamjee Jafferjee and he himself had each bought 5 tons coffee from a person in Tuticorin at a rate of Rs. 113/- C.I.F. Duty and expenses will come to about Rs. 25/-, so that their cost in Stores will be round about Rs. 138/-, and I think they will not sell lower than the price of Rs. 145/-. As advised by you at the time, we have been<sup>40</sup> trying very hard to have various prices fixed for the various grades of coffee, however, on proper investigation the department inform us that this for the present was not thought necessary, for the reason that they considered the price of Rs. 145/- very liberal for all the grades which were sold in India by the pool; moreover, Ceylon was only used to a low quality coffee from Java, and as long as coffee can be got people don't very much worry about the quality. In view of what we wrote above you will agree with us that we have been correct in not willing to buy any further coffee.

Notwithstanding your reports, we have always had the feeling that the better prices Ceylon could pay to the pool, the more coffee would be offered for sale, and it appears that we have been quite justified in our opinion. This was the principal reason apart from the financial one that we insisted on getting rid of the internal stocks. In the meantime you will inform us of course about any further sales that take place and of the price sold at. For the time being we are of course not interested in buying any further quantities of coffee, but with a view to our stocks which we think we shall have to keep here for some time, it is very important to us to know the selling prices in India. We have been trying this morning again to get rid of some coffee, but it is extremely difficult to sell. Everybody has got stocks and the price idea today is Rs. 142/- with a reduction of Re. 1/- for a minimum quantity of 1 ton, however it is impossible to sell today at this figure.

As for the time being the coffee business is finished, we have got to look for some other business, and we would like to hear from you whether it is possible for you to obtain export licences for other grains. We know that in Bombay export licences are issued for whole wheat, wheat flour and other foodstuffs. We are also thinking of starting to buy piece goods from India. The position at present is that lots of piece goods are arriving here by parcel post, as it is impossible to find freight accommodation for large quantities. We would like you to investigate the piece goods position in South India and report to us. We have heard that Mr. Karalasingham is in India and is buying up some piece goods for local dealers on a small commission basis. What we hear of it, we get the impression that he is not very successful. It would also be useful if you should visit Bombay and other centres in India, but before doing so, we think it best that you come first down to Colombo after the fasting season is over, so that we can talk over matters. You can form an idea yourself of this market and start for India again. It is impossible to arrange everything by correspondence, and therefore we expect you to come back next month.

*Salary & Travelling Expenses* :—You wrote at the time that you had no more travelling expenses, and this is to inform you that your salary which you have not been drawing so far, is lying to your credit here, and we are of course fully prepared to pay your travelling expenses, and if salary and/or travelling expenses are required, send us a cable on receipt of this letter, in which case we shall remit immediately. As we have not heard any further from you since the receipt of your letter we take it that of the last remittance of Rs. 20,000/- there was sufficient balance left to cover up expenses you had made. On the 3rd of August Mr. de Wildt wrote you a letter to let us know to which address we should remit your salary, and so far no reply has been received from you. Hence we did not remit.

Yours faithfully,  
BOGTSTRA & DE WILDT.  
Sgd. Illegibly.  
Partner.

Exhibits  
P 23  
Letter  
24-9-42  
—continued

Exhibits  
 P 24  
 Letter  
 5-10-42

**P 24. Letter**

Colombo,  
 5th October, 1942.

**Per Air Mail**

M. A. A. Sathar Esqr.,  
 C/o Esmail Company,  
 Station Road,  
 Tanjore.

Dear Sir,

We confirm our letter of the 24th ultimo, and telegrams were exchanged 10 in the meantime as per copies enclosed herewith.

*Trip to India* :—We of course fully agree to a further trip to Delhi or Bombay. As a matter of fact, we think it very urgent in this connection that we meet you and have the opportunity to talk matters over before you start on this new trip. It will also facilitate you in your dealings in India to have first class knowledge of local conditions. We therefore expect you to come back at your earliest convenience, after the Ramazan Festival, provided of course that all the coffee has been shipped.

*Coffee* :—The market here is the same. Everybody has coffee, and the few sales that are made are offered far below the controlled price. Last 20 week we sold 10 bags to Millers at the controlled price of Rs. 145/-, and when approaching Cargills and Apothecaries they informed me that they have had offers much lower. Apothecaries mentioned something in the neighbourhood of Rs. 130/-, which is about our cost price. If it is possible for you to obtain offers for the balance of our contracts lying in India, please let us know, as at present we are willing to sell same in your market if same is possible. What the future of this market will be, it is difficult to judge, as we have no idea of the quantities that India will be able to export to Ceylon. If the new crop comes off in India we expect a serious fall in the price. We would like to receive your opinion on this matter. 30

We received your telegram with quotations for Potassium Chlorate and Caustic Soda and Bleaching Powder, mentioning "all percent". We took this to be as meaning your quotations to be 100 lbs. however, not being certain especially as regards the high quotations, we cabled immediately to Coimbatore :—

"Your telegram 29th Potassium Caustic soda Bleaching Powder prices quoted do you mean per 100 lbs"

We received advice from the C.T.O. that on receipt of the telegram you had left Coimbatore for Tanjore and that the telegram had been posted to Tanjore, and the result is that so far we have not received your reply yet. 40 We would request you to always intimate to us your movements, so that we always will be in a position to get into contact with you immediately. It is quite well possible that we shall have to approach you in future for urgent and important matters, which have to be dealt with at once, and then it is

essential that we can reach you immediately and not be compelled to wait for a week or longer as in the present case. Exhibits

*B. Seydali & Sons, Kuttiichira Street, Calicut* :—We bought 250 dozen Umbrella Sticks from these people, for which we paid Rs. 1125/-. According to their information these 5 cases were despatched by rail about the middle of August, but so far same have not been received here. We found out that the goods are lying in Dhanuskodi, and were not allowed to be sent to Ceylon for the reason that Seyadali had failed to obtain an export permit for same. We have approached them immediately, and he writes  
 10 us that he has been sending his own men to Madras in order to obtain an export permit, but so far he has not succeeded. In the meantime, we ordered a further 200 dozen sticks, for which however we have not paid as yet, and we fear that also for this lot he finds it difficult to obtain an export licence. The difficulty is that stocks of sticks in the Umbrella Factory are nearly exhausted, and the sticks we ordered are urgently required. So if in your opinion the expenses are not too high, we would like you to go to Calicut and see what is going on there, and assist Seyadali to obtain an export permit. Please keep any expenses for this trip entirely separate from the other expenses, as same have to be charged to the Umbrella Factory.

P 24  
 Letter  
 5-10-42  
 —continued

20

Yours faithfully,  
 BOGTSTRA & DE WILDT.  
 Sgd. Illegibly.  
 Partner.

Can you quote for Riceflour? good market here.  
 I am already trying Karachi.

Intd.....

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**P 25. Letter**

**P 25**

Colombo,  
 8th October, 1942.

P 25  
 Letter  
 8-10-42

**Per Air Mail**

30

M. A. A. Sathar Esqr.,  
 C/o Esmail Company,  
 Station Road,  
 Tanjore.

Dear Sir,

We just received your telegram of the 7th instant informing us that the prices for chemicals quoted with your last telegram are meant for quantities of 112 lbs., for which information we thank you.

Mr. Aboobaker Joosub has arrived from India and is staying here.  
 40 Yesterday he came to the office and informed me that he has been investigating the market, but finds that without being in possession of export permits from India, he can do nothing here. He therefore leaves for India



Exhibits  
P 25  
Letter  
8-10-42  
—continued

tonight with his son Latiff. The latter is going to Delhi, in order to obtain export licence for various grains. Mr. Joosub is returning to Orissa, and they will be back in 3 weeks' time. It is therefore essential that you go to Delhi soonest possible; but of course the coffee must be despatched first or re-sold at your end, and we shall be glad to hear from you whether it is possible to re-sell the balance in India. The market at present here is over stocked with coffee, and we find it difficult to sell.

As already written before, and now especially in view of Mr. Joosub's visit to Delhi, come down as soon as possible to Colombo, so that you can be properly prepared for the trip to Delhi. 10

Yours faithfully,  
BOGTSTRA & DE WILDT  
Sgd. Illegibly  
Partner.

P 26  
Letter  
21-11-42

**P 26**

**P 26 Letter**

Colombo,  
21st November, 1942.

**Per Air Mail**

M. A. A. Sathar Esqr.,  
C/o Esmail & Co.,  
Station Road,  
Tanjore.

20

Dear Sir,

**Tender Cattle**

We received your telegram of the 19th instant and replied with our telegram of the 20th instant giving as many particulars as possible.

We are enclosing herewith the tender form in which all stipulations and conditions are fully set out, and it is of course imperative when we should go into this business to strictly adhere to the various stipulations.

Now the question is are you in a position and have you got sufficient knowledge to buy cattle as required, if not you shall most probably have to engage the services of somebody with knowledge, and then the question arises can you trust such a person. Also can you guarantee when you buy a cow whether she is 5, 7 or 10 years old. The supervision at this end will be very strict and professional men in our opinion will do the inspection. 30

Further more, as regards the price it is for us impossible to fix the price. You shall have to work out a price C.I.F. Kaytes including quarantine charges and including our profits. Cable same to us before the 30th so that we can tender.

Then another question is, we have got to bind ourselves for some months ahead. Now will the price of cattle at your end remain stationary 40

or will it go up. These are questions which have got to be seriously considered and we must have a satisfactory reply to same before we are willing to commit ourselves. The time for the tender is rather short, and we wonder whether you will be in time to get all the dates as to enable us to tender on the 30th.

Exhibits  
P 26  
Letter  
21-11-42  
—continued

Yours faithfully,  
BOGTSTRA & DE WILDT  
Sgd. Illegibly  
Partner.

10 Encl :—tender form.

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**P 11. Page of Cash Book**

**P 11**

Cash Book

P 11  
Page of  
Cash Book  
1943

(Page 53)

1943						Hongkong Bank	Personal
Oct. 20—	x	x	x	x	x	x	x
30—	By a/c M. A. A. Sathar—Balance of commission					8500.00	8500.00
30—	,, a/c Sundries; L/c Hanna & Co.					24.22	

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**P 29. Telegram**

20 **P 29**

31 Dec. 43

P 29  
Telegram  
31-12-43

Colombo 31 11/25

18/10

M. A. A. Sathar care

Esmail Company Station Road. Tanjore.

Owing to indisposition Mr. Bogtstra request be here on January fourth  
thanks compliments season.

BOGTSTRA DEWILDT.

Exhibits  
P 1  
Receipt  
26-8-44

**P 1. Receipt**

**P 1.**

M. A. A. Sathar & Co., Diyatalawa.

Received from Mr. M. A. A. Sathar, of Jeelani Manzil, 2nd Division, Maradana, Colombo, Mercantile Bank cheque No. 57794 dated 19th August 1944, for the sum of Rs. 2578/02 (Two thousand five hundred and seventy eight and cents two) in full settlement of monies due to me on account of business carried on by me with him in partnership at Diyatalawa, and since wound up as per Balance Sheets dated 3rd March 1944, prepared by Messrs. Pope & Co., Chartered Accountants, marked 'A' and hereto annexed. If any promissory note has been granted by Mr. Sathar to me, the cheque for Rs. 2578/02 now given includes amounts, if any, due on such promissory notes and will discharge such notes, if any.

I have no further claim against him whatsoever on account of the said partnership business at Diyatalawa. Mr. Sathar and I will, however, have to pay our respective proportionate share of the Income Tax and Excess Profit Duty in respect of the said Diyatalawa business when the same are assessed.

Sgd. Illegibly  
(on a 6 cent stamp) 20

Colombo,  
26th August, 1944.

WITNESSES.

Sgd. S. Sivasubramaniam

D 3  
Letter  
29-11-44

**D 3. Letter**

**D 3.**

29th November, 1944.

M. A. A. Sathar, Esqr.,  
Colombo.

Dear Sir,

We confirm our conversation early this month whereby it was mutually agreed that you should resign from this firm by the end of this year. Therefore your services are no more required after the 31st of December 1944.

Yours faithfully,  
BOGTSTRA & DE WILDT  
Partner.

**D 1. Letter**

Exhibits

**D 1.**211, Hultsdorp Street,  
Colombo,D 1  
Letter  
4-12-44

4th December, 1944.

Messrs. Bogtstra & De Wildt,  
Colombo.

Dear Sirs,

Yours of the 29th November 1944 addressed to my client, Mr. M. A. A. Sathar, has been handed to me for reply.

10 You intimate to my client your confirmation of the conversation early in November between him and you: "whereby it was mutually agreed" that he should resign from your Firm "by the end of this year".

My client is surprised at such an intimation as in none of the conversations he had with your good selves, was the matter of his resignation broached. My client, however, is glad and relieved to sever his connection with your Firm.

In view of the substantially useful services my client has rendered your Firm, it is both surprising and humiliating that you should subscribe to such an untruth that he had agreed to resign from your firm.

20 The several conversations my client had with you were strictly limited to his dues from you—not a word being spoken as to his resigning.

The circumstances impress me that your letter has been prompted by no other motive than that of evading your obligations in the matter. I am hoping however that you will not put my client to the painful necessity of enforcing his claim.

I am prepared to advise my client, without prejudice, to terminate his services immediately, waiving salary for the current month and bonus, on condition that you settle what is due to him as commission immediately.

30 My client joined your Firm in the Import Department in 1937 on a salary of Rs. 150/- per month plus an annual bonus. By 1940-41, however, by my client's unquestioned efficiency and business knowledge, experience and general acumen the Firm was able to turn out a substantial profit out of which you paid my client Rs. 5000/- as commission he had earned and was lawfully entitled to on the basis agreed upon—In 1941-42 the turn over was again just as satisfactory and you paid my client a similar amount. In the following year 1942-43 trading conditions suffered a slight set back and you were able to pay my client only Rs. 4000/-.

40 It was during that period that Mr. Sathar on your behalf was away from Ceylon for 8 months and it is clear that it was a case of cause and effect; but in 1943-44 you netted a profit in the neighbourhood of 2½ lakhs

Exhibits  
D 1  
Letter  
4-12-44  
—continued

and there is due to my client as even minimum commission a sum of Rs. 25,000/- more or less which I have to request you to forward me at your earliest.

My client's services to you were invaluable particularly in his handling of the Pettah trade and also materially contributed towards the handsome profit you have earned this year.

During my client's connection with your Firm, his acknowledged capacity and money earning assets on behalf of his principals brought him several tempting offers from your trade competitors which he however did not accept out of a sense of loyalty to you—an attitude for which you have 10 so ill-compensated him.

My client can also well afford to be independent of service, but I can assure you that he does not intend such a circumstance to stand in his enforcing his claim against you to the fullest extent possible and which my examination of the relevant books, papers, telegrams, letters and other documents generally, convinces me that he is in the strongest possible position in the matter.

Confident that you will see the legitimacy and soundness of my client's claim, that you will act fairly by him and awaiting your early favour.

Yours faithfully, 20  
Sgd. A. C. M. A. Cader.

D 4  
Letter  
15-12-44

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#### D 4. Letter

D 4.

156, Hulstsdorp Street,  
Colombo,  
15th December, 1944.

A. C. M. Abdul Cader, Esq.,  
Proctor & Notary,  
211, Hulstsdorp Street,  
Colombo.

Dear Sir,

Your letter of the 4th instant addressed to Messrs. Bogtstra & De Wildt at the instance of Mr. M. A. A. Sathar has been handed to me for reply.

My clients express their surprise at the contents of your letter and your client's statements and requests. They wish me to reiterate the contents of their letter dated 29th November addressed to your client and to the fact that it was mutually agreed that your client should resign from my client's firm by the end of this year. I am further instructed to deny any liability whatsoever to your client as alleged in your letter except the payment of the salary for December 1944 payable at the end of the month. My clients wish me to add that they have been treating your client fairly 40 and generously and that the receipt of your letter makes them feel inclined to think that their kindness has been somewhat misplaced.

Yours faithfully,  
Sgd. S. Sivasubramaniam.

**D 2. Letter**Exhibits  
D 2  
Letter  
18-12-44**D 2.**

211, Hultsdorp.

Colombo,

18th December, 1944.

S. Sivasubramaniam, Esq.,  
Proctor & Notary,  
Colombo.

Dear Sir,

Your letter of the 15th instant, on behalf of Messrs. Bogtstra & De  
10 Wildt to hand.

You are content to dispose of my client's claim for commission, on the mutually agreed and provable basis for 1943-44 by denying any liability whatever, thus leaving my client with no alternative but that of enforcing his claim legally and which he proposes doing unless Messrs. Bogtstra & De Wildt think better of it and send me a cheque on the lines indicated by me in my letter of the 4th instant, before the 31st instant, inclusive. I note that your clients wish you to inform me that they have treated my client fairly and generously. I fail to see where the fairness or generosity come seeing that they are endeavouring to deprive him of what is justly due to him  
20 and that it was mainly through his efforts that your clients have been able to re-establish themselves on a sound and substantial profit earning footing.

Please take notice that I am not prepared to enter into further correspondence on this matter and that it is only the receipt immediately of a cheque as stated that will stay my client's hand and avoid the exposure that may prove very damaging to their business interest.

Yours faithfully,  
Sgd. A. C. M. A. Cader.

No.....

Supreme Court of Ceylon  
No. 441 of 1948 (Final)

District Court, Colombo  
No. 16684/M

*In the Privy Council*  
*on an Appeal from the Supreme Court of Ceylon*

MOHAMED AKBAR ABDUL SATHAR...*Plaintiff-Appellant*

VERSUS

1. W. L. BOGTSTRA, and
2. H. DE WILDT, both carrying on business in partnership under the name style and firm of "Bogtstra and De Wildt".....*Defendants-Respondents*

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RECORD  
OF PROCEEDINGS

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