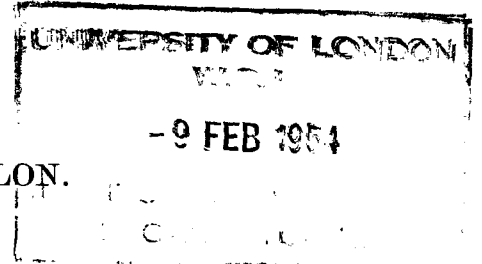


In the Privy Council.

ON APPEAL
FROM THE SUPREME COURT OF CEYLON.



33511

BETWEEN

THE ATTORNEY GENERAL OF CEYLON
(Defendant) *Appellant*

AND

A. D. SILVA (Plaintiff) *Respondent.*

10

CASE FOR THE RESPONDENT.

RECORD.

1. This is an appeal from a Judgment and Decree of the Supreme Court of Ceylon, dated the 31st May, 1951, setting aside a Judgment and Decree of the District Court of Colombo, dated the 24th May, 1949, whereby an action instituted by the Respondent against the Appellant (as representing the Crown in Ceylon) for the recovery of a sum of Rs.40,000/- as damages for breach of contract, together with interest and costs, was dismissed.

p. 55.
p. 61.
p. 44.
p. 51.

20 By its said Judgment and Decree the Supreme Court Ordered Judgment to be entered in favour of the (Plaintiff) Respondent for the said sum as prayed for, with costs in both Courts.

pp. 60, 61.

2. The main question for determination on this appeal is whether or not the Principal Collector of Customs in Ceylon (hereinafter called "the Principal Collector") acts for and on behalf of the Crown so as to make the Crown liable when, in the *bona fide* exercise of his authority, he enters into a contract of sale of goods under Section 108 of the Customs Ordinance (C. 185, hereinafter referred to as "the Ordinance")—a Section which empowers and authorises him, after public advertisement, to sell by public auction goods which have been left in a Customs' warehouse for more than three months without payment of warehouse rent.

30 3. The said Section 108 and other relevant Sections of the Ordinance will be found in an Annexure hereto.

4. The facts, briefly stated, are as follows :—

On the 21st February, 1947, the following Notification as to a sale of unclaimed goods by public auction appeared in the *Government Gazette* of that date :—

pp. 9-10.

“ Notice is hereby given that the under-noted articles which have been lying in the Customs’ premises will be sold by public auction on Tuesday, March 4, 1947, from 1.30 p.m.

“ All goods sold and not cleared within three clear days after the date of approval of the sale as indicated on the Customs’ Notice Board will become liable to the payment of rent at the 10 rates prescribed in the Customs’ Tariff.

“ A deposit of at least 25 per cent. at the discretion of the officer conducting the sale is payable immediately after the sale of each item. In the event of a bidder not completing payment within three days of the date of approval of the sale as indicated on the Customs’ Notice Board the deposit will be liable to forfeiture.

“ Warehouse No. 15

“ Unclaimed Goods

[Here follows a list of goods with Serial Numbers and names 20 of Vessels from which presumably the goods were landed]

“ Canal Yard

“ Unclaimed Goods

[Here follows a shorter list of goods (including steel plates) with names of vessels from which presumably the goods were landed]

R. L. Jones

for Principal Collector ”

H.M. Customs,
Colombo, February 17, 1947.

5. At the auction sale which, in pursuance of the said Notification, 30 was duly held on the 4th March, 1947, the Respondent purchased various goods for a total sum of Rs.1,068/—, the main items being 165 sheet steel plates which he bought for Rs.1,050/—.

p. 8, II. 21-30.

Following payment of a deposit of Rs.265/— on the day of the sale, the Respondent paid the balance of Rs.803/— on the 7th March, 1947, and thereupon a Customs Receipt and a Delivery Order were issued to him. The Delivery Order was in the following terms :—

p. 2, p. 76.
p. 3, p. 77.

“ L.W. Canal Yard

“ Please deliver the undermentioned goods sold by auction on 4.3.47. 40

“ The sale was approved by D.C. on 7.3.47.

[Here follows a list of the goods purchased with items priced, and the amount paid in advance, and the balance paid, in respect of each.]

7.3.47.

“ (Sgd.) Illegibly
for Chief Preventive Officer.”

It will be noticed that the above document refers to the fact that the sale of the said goods to the Respondent was "approved by D.C." [i.e. Deputy Collector of Customs]. Giving evidence for the (Defendant) Appellant in the action hereinafter referred to, the Principal Collector said that a sale is not approved until a report is made as to the value of the goods and that in this case the Customs Appraisers were of opinion that the sum which the Respondent had agreed to pay for the goods was a "fair" one. He said (when giving evidence) that the appraisal of the Customs Appraisers was a very bad one.

p. 30, l. 40.
p. 31, ll. 13-19.

- 10 6. Notwithstanding his production of the said Delivery Order the Respondent was prevented from taking delivery of the goods he had purchased. On enquiry, he was informed that the goods had been sold by the British Stores Disposal Board (who were the previous owners thereof) to Messrs. Maharajan and Co. in whom the ownership was now alleged to be vested.

p. 7, ll. 22-32.
p. 15, ll. 25-42.
p. 44, ll. 18-24.
p. 56, ll. 27-32.

Further attempts to procure delivery having proved fruitless, the Respondent (hereinafter also called "the Plaintiff") instituted the present proceedings against the Appellant in the District Court of Colombo.

- 20 7. In his Complaint, dated the 16th September, 1947, the Plaintiff referred to the said Notification of the Principal Collector "who is a public officer acting for and on behalf of the Crown," to his said purchases (particulars of which were set out in a Schedule to the Complaint), to the said Delivery Order, and continued as follows:—

p. 7, ll. 13-21.

- 30 "4. When the Plaintiff claimed delivery of the said goods he was told that there appeared to be some error and he was asked to defer taking delivery. Thereafter the Principal Collector and his agents invited the Plaintiff to certain conferences and made certain offers to him; and on various grounds, *inter alia*, that the Defendant" [the present Appellant] "was being consulted, put off making delivery of the goods to the Plaintiff.

p. 7, ll. 22-37.

"5. Finally on or about 11th July, 1947, the Plaintiff . . . made demand of the Principal Collector for delivery of the said goods before the 21st July but the latter wrongfully and unlawfully failed and neglected to make delivery of the said goods to the Plaintiff.

- 40 "6. The Plaintiff states that the Notification in the *Government Gazette* . . . amounted to a representation that the Principal Collector had at least the right and/or authority to sell the goods and that he is estopped from denying that he had such right and/or authority."

8. On the subject of damages for breach of contract, accrual of cause of action, etc., the Plaintiff said, in his said Complaint:—

"7. As there was no available market where goods of this type could be purchased and there was a great scarcity of steel the

p. 7, l. 38 to p. 8, l. 4.

Plaintiff states that he could easily have disposed of the said goods at over Rs. 40,000/- and states that by reason of the failure on the part of the Principal Collector to make delivery he has suffered loss in a sum of Rs. 40,000/-

* * * * *

p. 8, ll. 8-18.

“ 9. A cause of action has therefore accrued to the Plaintiff to sue the Defendant for the recovery of Rs.40,000/- as damages which sum or any part thereof the Defendant has failed and neglected to pay though thereto often requested.”

Accordingly, the Plaintiff's prayer was—

“ (A) for an Order directing the Defendant to pay him a sum 10 of Rs.40,000/- and legal interest from date of action till payment in full ;

“ (B) for costs ;

“ (C) for such further and other relief as to this Court shall seem meet.”

p. 11.

p. 11, ll. 21-33

9. By his Answer dated the 28th November, 1947, the Defendant admitted that: (1) “ a sale as advertised was held by the Principal Collector of Customs ”; (2) “ the Plaintiff was declared the purchaser of the goods referred to in the Schedule to the Plaintiff ”; (3) “ the Plaintiff paid to the Principal Collector of Customs the purchase price and obtained 20 a delivery order for the said goods ”; and (4) “ the Principal Collector of Customs refused to deliver the said goods to the Plaintiff.”

He denied, however, that the said refusal to deliver was wrongful or unlawful or that any cause of action accrued to the Plaintiff thereby to sue the Defendant.

p. 12.

10. By way of further answer, the Defendant stated that the Principal Collector of Customs, in purporting to sell the said goods had intended to exercise what he, in good faith, believed were powers conferred upon him by the said Ordinance but that, in publishing the said Notification and in selling the said goods, he had not acted for or on behalf or with the authority of the Government of Ceylon so as to give the Plaintiff a cause 30 of action against the Defendant; that the sale was void because the said goods could not be sold under the provisions of the said Ordinance or otherwise; “ that the said goods were put up for sale and were purchased by the Plaintiff on the basis that they were ‘ unclaimed goods ’ whereas at all times material the said goods had been claimed by the British Stores Disposal Board for and on behalf of the Minister of Supply, and that in the circumstances there was no valid contract between the Principal Collector of Customs and the Plaintiff, in any event between the Government of Ceylon and the Plaintiff ”, and “ that in any event the Plaintiff has no cause of action against the Defendant.”

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Concluding his Answer the Defendant stated that he had brought into Court the sum of Rs.1,068/- paid by the Plaintiff to the Principal Collector; and he prayed that the action be dismissed with costs.

11. Issues framed in the suit were, after a consideration of the oral and documentary evidence which both sides had produced, answered thus by the learned District Judge :—

“ (1) Did the Principal Collector of Customs in publishing the Notification in the *Government Gazette* referred to in paragraph 2 of the Plaint act for and on behalf of the Crown ? ” p. 13, ll. 11-14.

Answer : “ He purported to act for the Crown but outside the scope of his authority.” p. 50, ll. 11-12.

10 “ (2) If so, does a cause of action accrue to Plaintiff against the Crown ? ” p. 13, ll. 15-16.

Answer : “ No, in view of my answer to (1).” p. 50, l. 13.

“ (3) Did the said Notification amount to a representation that the Principal Collector of Customs had the right and/or authority to sell the said goods ? ” p. 13, ll. 17-19.

Answer : “ Yes.” p. 50, l. 14.

“ (4) If so, is the Defendant estopped from denying that he had such right and/or authority ? ” p. 13, ll. 20-21.

Answer : “ No.” p. 50, l. 15.

20 “ (5) To what damages, if any, is the Plaintiff entitled ? ” p. 13, l. 22.

Answer : “ Nil.” p. 50, l. 16.

“ (6) If Issue (1) is answered in the negative, does any cause of action accrue against the Defendant as representing the Crown ? ” p. 13, ll. 24-26.

Answer : “ No.” p. 50, l. 17.

“ (7) In selling the goods referred to, did the Principal Collector of Customs act or purport to act in the exercise of what he in good faith believed were powers conferred on him by the Customs Ordinance (C.185) ? ” p. 14, ll. 24-27.

Answer : “ Yes.” p. 50, l. 18.

30 “ (8) If Issue (7) is answered in the affirmative, did the Principal Collector act for and on behalf of the Crown ? ” p. 13, ll. 31-32.

Answer : “ No.” p. 50, l. 19.

“ (9) Was there any valid contract entered into between the Crown and the Plaintiff for the sale to the Plaintiff of these goods ? ” p. 13, ll. 33-35.

Answer : “ No.” p. 50, l. 20.

“ (10)a. In selling the said goods did the Principal Collector of Customs sell on the basis that they were unclaimed goods ? ” p. 14, ll. 34-36.

Answer : “ Yes.” p. 50, l. 21.

40 “ (10)b. In purchasing the said goods did the Plaintiff act on the basis that they were unclaimed goods ? ” p. 14, ll. 37-38.

Answer : “ Yes.” p. 50, l. 22.

“ (10)c. At all material times were the said goods claimed by the British Stores Disposals Board for and on behalf of the Ministry of Supply ? ” p. 14, ll. 39-41.

Answer : “ Yes.” p. 50, l. 23.

p. 14, ll. 42-44.

“(10)d. If Issues *a*, *b* and *c* above” [i.e. (10)a, (10)b, and (10)c] “are answered in the affirmative, is there a valid contract between the Principal Collector of Customs and/or Crown and the Plaintiff ? ”

p. 50, ll. 24-27.

Answer : “ Argument on this question was not addressed to the Court. It can hardly be said on the facts that there was a mutual mistake which would have rendered the contract invalid.”

pp. 44-50.

12. By his Judgment dated the 24th May, 1949, incorporating the said Answers to Issues, the learned District Judge dismissed the action with costs.

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p. 45, ll. 1-3.

13. From the evidence led on behalf of the Crown, the learned District Judge concluded that “ the goods in question belonged to the Navy and were deposited in the said warehouse for the use of the Navy ” ; that, subsequently, the Ministry of Supply took them over and, later, it entered into an agreement to sell them to Messrs. Maharajan and Co. under which agreement “ the property in the goods would have passed only after they had been measured and taken delivery of ” and that “ this could not be done prior to April, 1947, as in the meantime the Principal Collector, on the footing that the goods were unclaimed, had advertised and sold them ” ; that, therefore, at the time of the sale to the Plaintiff

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p. 45, ll. 7-30.

p. 45, ll. 31-43.

the property in the goods was in the original consignee namely the Naval Authorities or the British Stores Disposal Board ; that the Principal Collector had been informed by the Naval Authorities that the goods in question were not unclaimed cargo and that arrangements were being made to have them removed as opportunity occurred ; that “ despite this, as a result of blundering on the part of the Customs Officials, these goods were, after correspondence with the Chief Secretary who was made to understand that there was no claim in respect of them from the Services, advertised for sale ” ; that “ according to the correspondence with the Chief Secretary . . . the Principal Collector came to the conclusion that the property was unclaimed and decided to sell it.”

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p. 46, ll. 11-13.

p. 46, l. 14 to p. 47, l. 14.

14. In order to ascertain the powers vested in the Principal Collector under the Ordinance, the learned District Judge referred to several Sections thereof before coming to Section 108 under which the Principal Collector had acted. He expressed the view that the Principal Collector’s power of sale under the said Section “ only applies to goods in respect of which no one has come forward and made an entry within the three months ” and continued as follows :—

p. 47, ll. 31-34.

p. 47, l. 36 to p. 48, l. 6.

“ In the case of an ordinary consignee there would be no difficulty ; he would be liable for duty, warehouse rent, etc., and if he had failed to make an entry the Principal Collector would be acting within his authority in advertising and selling the goods. In this case, however, the goods clearly are goods belonging to the Crown and imported for use of the Services. As such they would not be liable for duty (*vide* Section 22). With regard to warehouse rent even if the Crown, meaning thereby the Imperial Government, is liable to pay itself, as represented by the Ceylon Government, any money for warehouse rent that is a matter with regard to which

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there was an arrangement between the parties according to the evidence of the Principal Collector Mr. Christoffelsz. Under that agreement the Services would appear to have been willing to pay warehouse rent, but such payment it seems to me must be regarded as being made *ex gratia* and as a matter of arrangement between the two Governments. In, therefore, purporting to sell the property the Principal Collector it seems to me acted beyond his authority because it could not have been said that any duty, warehouse rent or other charges were due in respect of the property in question."

- 10 15. The learned District Judge was of opinion that if the Principal Collector "did properly act within the authority granted him by Section 108 it may have been possible to contend that he as a servant of the Crown acted for and on behalf of the Crown, but he does not to my mind appear to have acted within that authority." The learned Judge appears to have formed the opinion that the Principal Collector had acted beyond his authority more because of the motive which prompted him to use his powers than of any real excess of powers or authority which he possessed. He said that the sale "was not for the purpose for which the Principal Collector was authorised to effect a sale, namely, to recover dues, warehouse rent, etc. ; it was obviously in order to prevent congestion" [in Customs premises] "despite the fact that the Principal Collector knew the goods belonged to the Services though he did not know, as a result of his own negligence, at the time of the sale that it was claimed by one specific department, namely, the Naval Authorities . . . In so acting, although he purported to act under the provisions of the Customs Ordinance, he had no authority to do so."

- 30 On the question of estoppel, the learned Judge said that the Crown was not, by reason of the said Notification, estopped from denying the Principal Collector's authority to sell the goods in question. He was of the view that "estoppel if at all will . . . be against the Principal Collector and not against the Crown where the Crown's agent does not act strictly within the authority given."

16. A Decree in accordance with the Judgment of the learned District Judge was entered on the 24th May 1949 and against the said Judgment and Decree the Plaintiff appealed to the Supreme Court of Ceylon.

- 40 17. By their Judgment. dated the 31st May, 1951, the learned Judges of the Supreme Court before whom the appeal came (Dias S.P.J. and Gunasekara J.) set aside the said Judgment and Decree of the District Court and ordered Judgment to be entered in favour of the Plaintiff-Appellant (the present Respondent) for a sum of Rs.40,000/- as prayed for, with costs in both Courts.

18. Delivering the main Judgment of the Court, Dias S.P.J. (with whom Gunasekara J. agreed) referred to the circumstances in which the said goods came to be sold to the Plaintiff by the Principal Collector. He said, referring to documents which the Defendant had produced, that the evidence showed that the Principal Collector had been inconvenienced

p. 55, l. 37 to p. 56, l. 21. by the goods for nearly three years prior to their sale; that on the 25th February, 1946, he had requested the heads of various Service units to clear articles claimed by them; that subsequently he had complained to the Financial Secretary that the space occupied by "these packages" was lessening storage essential for other cargo and affecting the sanitation of the warehouses, and that, therefore, the approval of the General Officer Commanding should be obtained to the goods being disposed of under Section 106 or Section 108 of the Ordinance; that, later, on the 26th June, 1946, he had notified all Service heads in Ceylon of his proposal to dispose of the goods as they "appear to have been abandoned"; that on the 28th November, 1946, he had informed the Chief Secretary of Ceylon (who was in charge of Defence and the channel of communication between the Services and the Government Departments) of his proposal to advertise and sell the goods; and that, by his letter dated the 27th December, 1946, the Chief Secretary had approved of the said proposal. 10

p. 55, ll. 25-29. 19. On the liability of the said goods to be sold if warehouse rent in respect of them remained unpaid, the learned Supreme Court Judge (Dias S.P.J.) drew attention to Section 17 of the Ordinance and to the Regulations made thereunder which provide for the levying of warehouse rent in respect of "all goods" irrespective of whether they are public or private property; to the fact that it had been conceded that although exempted from import or export duty under Section 22 of the Ordinance the said goods would nevertheless be liable to warehouse rent; and to Section 108 of the Ordinance which empowers and authorises the Principal Collector of Customs after public advertisement, to sell goods which are lying in Customs premises for a period longer than three months in respect of which warehouse rent is due. 20

p. 55, ll. 30-32.

p. 55, ll. 33-36.

p. 56, ll. 36-43. 20. As to the argument advanced on behalf of the Crown that the goods in question could not be sold under the said Section 108 even though warehouse rent had become due in respect of them as "they had been imported into Ceylon and left in the warehouse by the Crown and the Crown is not bound by Section 108," the learned Supreme Court Judge (Dias S.P.J.) said :— 30

p. 57, ll. 5-12. "The liability of the goods to be sold depends . . . not on the Crown being *bound* by Section 108 but on the Crown being *authorised* by that Section to sell through its officers goods in respect of which warehouse rent is due. Once it is conceded that these goods, which were left in a warehouse for a longer period than three months, were goods in respect of which warehouse rent was due to the Crown under Section 17, they were clearly goods which were liable to be sold under Section 108 for the recovery of the debt due to the Crown." 40

p. 58, ll. 4-7.
p. 57, ll. 35-44. 21. The learned Supreme Court Judge (Dias, S.P.J.) rejected also the argument for the Crown that "under Section 108 the Principal Collector does not act as the servant or agent of the Crown but . . . under statutory powers." He pointed out that the Customs Department of Ceylon is a revenue-collecting department of the Crown and its official head—the Principal Collector—is a public servant remunerated from the public

revenue; that when the Principal Collector acts under Section 108 he does not act on his own behalf nor for his private benefit nor on behalf of the owner of the goods to be sold but for and on behalf of the Crown to whom, as was admitted in this case, warehouse rent was due; and that, when so acting, the Principal Collector is clearly empowered by the said Section to enter into a contract of sale such as was sued upon in this case. p. 58, ll. 10-13.

Continuing, the learned Judge said :—

10 “ It seems to be irrelevant to consider whether the Principal Collector of Customs was or was not acting under statutory powers. In my view whether the Principal Collector acted under statutory powers or on the express orders of Government, in either case so long as he acts *bona fide* and within the scope of his authority he is an agent of the Crown and his acts bind the Crown. The documentary evidence supports the view that all his acts were transacted *bona fide* for and on behalf of the Crown.” p. 58, ll. 14-21.

22. On the question as to whether in this case, where it was conceded that there had been a breach of contract, the Plaintiff's remedy was against the Principal Collector personally or against the Crown, the learned Supreme Court Judge (Dias, S.P.J.) pointed out that in Ceylon (where the remedy by petition of right does not exist) the Crown can be sued in contract, and that in all cases of alleged breach of contract by the Crown, in the absence of any statutory bar, an action in Ceylon is properly instituted against the Attorney-General as representing the Crown. p. 58, ll. 21-24.
p. 58, ll. 27-32.
p. 59, note.

He next referred to the law as stated in various Ceylon decisions and concluded on this subject as follows :— p. 58, l. 33 to p. 59, l. 5.

“ An action will lie against a public officer personally *when the action is in tort*, where he acts *mala fide* and not in the *bona fide* exercise of his office. p. 59, ll. 6-8.

30 “ Where however the case is one of a mere *breach of contract*, whether the public servant acted under statutory powers or not, the cases cited above show that the action must be brought against the Attorney-General, unless the Crown can show that the public servant acted without authority, actual or ostensible, or that there was no holding out by the Crown that the public servant was its agent. This the Crown cannot do in this case. p. 59, ll. 8-14.

“ Mr. H. V. Perera for the appellant ” [present Respondent] “ cited certain passages from *Robinson on Public Authorities* (1925) Edition, page 8 et seq. The law in England seems to be the same as in Ceylon . . . p. 59, ll. 15-17.

40 “ I am therefore unable to accede to the argument of the Crown that no action lies against the Crown in this case. If the argument of the Crown is sound then in this case the subject would be without a remedy, for he cannot sue the Crown, and, on the authorities, no action will lie against the Principal Collector of Customs ! ” p. 59, ll. 38-42.

23. The learned Supreme Court Judge (Dias S.P.J.) rejected also the further argument advanced on behalf of the Crown that, by reason p. 57, ll. 2-4.
p. 60, ll. 1-10.

of the provisions of Section 148 to 150 of the Ordinance, this action should have been instituted not against the Crown but against the Principal Collector. He said on this subject :—

“ In my opinion these Sections do not lay down substantive law, and do not create any rights of action against a customs officer. They merely indicate certain rules of procedure which must be observed if and when a customs officer is sued. The law relating to the right to sue a customs officer personally must be sought for elsewhere. Sections 148–150 do not have the effect of diverting the subject’s cause of action from the Crown to the public officer.” 10

p. 60, ll. 11–15.

24. Concluding his Judgment, the learned Supreme Court Judge (Dias S.P.J. with whom Gunasekara J. agreed) expressed his opinion that the Court below had reached a wrong conclusion, and he held, therefore, that its Judgment must be set aside. The facts not being disputed, the Appellate Court was, in his view, in as good a position as the Trial Court to reach a conclusion on the facts and law.

And, finally, on the question of damages, he said :—

p. 60, ll. 16–20.

“ There is an expert engineer, and a person who made an offer to the Plaintiff to buy the goods, who prove that the amount 20 claimed by the Plaintiff is not excessive.

“ The learned Solicitor-General did not dispute that in the event of our holding against the Crown these damages are not excessive.”

p. 61.

25. A Decree in accordance with the Judgment of the learned Judges of the Supreme Court was entered on the 31st May, 1951, and against the said Judgment and Decree this appeal to Her Majesty in Council is now preferred, leave to appeal having been granted to the Appellant by Decrees of the Supreme Court, dated the 22nd June, 1951, and the 13th July, 1951. 30

pp. 63, 65.

The Respondent humbly submits that the appeal should be dismissed with costs for the following among other

REASONS.

- (1) BECAUSE on the admitted facts of this case it is abundantly clear that, in entering into the said contract of sale with the Plaintiff, the Principal Collector acted throughout for and on behalf of the Crown in good faith and within the scope of his authority.
- (2) BECAUSE in Ceylon the Crown (as represented by the 40 Attorney-General) is liable for the breach of a contract entered into by its agents or servants and this action was therefore properly instituted against the Appellant.
- (3) BECAUSE the goods in question were rightly regarded by the Principal Collector as liable to be sold when

warehouse rent in respect of them remained unpaid for more than the prescribed period and the fact that they were Service goods did not affect the said liability.

- (4) BECAUSE the learned District Judge based his Judgment upon erroneous conclusions of law and fact, among them, that warehouse rent had not accrued or could not accrue in respect of the said goods.
- (5) BECAUSE, for reasons stated therein, the Judgment of the Supreme Court is right and ought to be affirmed.

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PHINEAS QUASS.

R. K. HANDOO.

CARL JAYASINGHE.

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

[ANNEXURE.]

ANNEXURE

THE CUSTOMS ORDINANCE

(C. 185; LEGISLATIVE ENACTMENTS OF CEYLON VOL. IV, P 491)

PART I

MANAGEMENT

* * * * *

2. Appointment of officers. . . . Principal Collector.—The Governor, or, under his authority, the Principal Collector, shall appoint proper persons for the management and collection of the customs . . . and the Principal Collector of Customs shall, throughout Ceylon, have the general superintendence of all matters relative to the customs. 10

* * * * *

17. Power to charge warehouse rent.—On all goods lodged in any King's warehouse, warehouse, or place of deposit provided by Government, it shall be lawful for the Collector to charge, demand, and receive warehouse rent for all such time as the same shall remain in such warehouse, at such rates and under such regulations as may from time to time be fixed by the Governor, as warehouse rent payable on goods so lodged, and no goods upon which warehouse rent may be due shall be removed until the same shall be paid.

* * * * *

36. Provision with respect to unloading goods, depositing and removing of the same from the King's warehouse, and penalties for failure to remove within prescribed time.—(1) No goods shall be unladen from any ship until a sufferance shall have been granted by the Collector for the landing of the same, and no goods shall be landed except at the place appointed and expressed in such sufferance; and all goods so landed shall be taken and deposited in the King's warehouse, and within three clear days from the date of landing the importer shall make a full and complete entry thereof as hereinafter provided, and shall either pay down all duties which shall be due and payable on such goods, or shall duly warehouse the said goods, or, if the goods be free of duty, shall so enter the same; and in default of such entry being made and the said goods being removed within three clear days as aforesaid, such goods shall be liable to double rent for every period of twenty-four hours during such time as they may remain in the warehouse; and all goods unladen, landed, or removed without such sufferance, or contrary to the directions in such sufferance shall be forfeited. 20 30

(2) In computing the said period of three clear days . . .

* * * * *

49. Importer to deliver bill of entry.—The person entering any goods inwards, whether for payment of duty or to be warehoused, or for payment of duty upon the taking out of the warehouse, or whether such goods be

free of duty, shall deliver to the Collector a bill of entry of such goods fairly written in words at length . . . and shall pay down any duties and dues which may be payable upon the goods mentioned in such entry . . . and such bill of entry when signed by the Collector, or person authorised by him, and transmitted to the proper officer, shall be the warrant to him for the examination and delivery of such goods . . .

* * * * *

82. Goods to be cleared within two years. Duties to be paid upon deficiencies, etc.—All warehoused goods shall be cleared either for home use or exportation within two years from the date on which the same were
 10 warehoused, or within such further period as the Collector shall allow, in which case the goods shall be examined by the proper officers, and the duties due upon any deficiency or difference between the quantity ascertained on landing, and the quantity found to exist on such examination, together with the warehouse rent and necessary expenses attendant thereon shall, subject to such allowances as are by law permitted in respect thereof, be paid down, and the quantity so found shall be re-warehoused in the name of the owner or proprietor thereof, in the same manner as on first importation.

83. Goods not cleared or re-warehoused or duties paid on deficiencies after two years to be sold. Proceeds of sale; how to be applied.—If any
 20 warehoused goods shall not be duly cleared, exported, or re-warehoused, and the duties ascertained to be due on the deficiencies aforesaid shall not be paid at the expiration of two years from the previous entry and warehousing thereof, or within such further period as shall be permitted by the Collector, the same, if worth the duty due thereon, shall after one month's notice to the warehouse keeper, importer, or consignee, be sold either for home use or exportation with or without the consent of the warehouse keeper, importer or consignee; and the proceeds thereof shall
 30 and the surplus, if any, shall be paid to the owner or proprietor of such goods, if known . . .

* * * * *

86. Bill of entry for warehoused goods delivered for home use.—Upon the entry of any goods to be cleared from the warehouse for home use, the person entering such goods shall deliver a bill of entry . . . in like manner and form and containing the same particulars as hereinbefore required on the entry of goods to be delivered for home use on the landing thereof, as far as the same may be applicable, and shall at the same time pay down to the proper officer of customs the full duties payable thereon . . .

87. [Value of goods for allowance on deficiencies to be estimated at market price] . . .

* * * * *

104. Goods lodged in King's warehouse liable to claims for freight, etc.—(1) All goods or merchandise which shall be lodged in any King's warehouse under the provisions of this Ordinance not being goods seized as forfeited to His Majesty, shall, when landed, continue and be subject and liable to such and the same claim for freight and general average . . .

(2) The Collector is hereby authorised and required, upon due notice . . . to detain and keep in the King's warehouse the whole or such portion of such goods . . . until he receives notice in writing that the said charges are paid . . .

* * * * *

(4) If any goods or merchandise deposited as aforesaid be left in any custom house or King's warehouse for a longer period than ninety days from the date of landing, such goods shall, after public advertisement, be sold by public auction either for home use or exportation, and the proceeds thereof applied first to the payment of the duties due thereon, the warehouse rent, and expenses of sale, then to the payment of the freight . . . and the 10 overplus, if any, shall be paid to the proprietor of the goods . . .

* * * * *

106. [Goods concealed in packages or delivered without entry forfeited.]

* * * * *

108. Power to sell goods not cleared within three months.—All goods left in any King's warehouse or on the customs premises for a longer period than three months, unless permitted to remain by the special permission of the Collector, shall, after public advertisement, be sold by auction to answer the duties, warehouse rent, or other charges due thereon, and any overplus shall be paid, if claimed within twelve months from the date of sale, to the owner of such goods, who shall have no further claim touching the same, but if there be no claimant such overplus 20 shall be brought to account as revenue :

Provided that any goods of a perishable nature . . .

* * * * *

148. Notice to be given to officers.—No summons shall be sued out against, nor a copy of any process served upon, any officer of the customs or other person as aforesaid, for anything done in the exercise of his office until one month after notice in writing shall have been delivered to him, or left at his usual place of abode . . .

149. Actions to be brought within two months of the cause of them.—Every such action as in the last section referred to shall be brought within two months of the cause thereof, and shall be laid and tried in the district where the facts were committed . . .

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150. Officer may tender amends.—It shall be lawful for such officer or other person as aforesaid, within one month after such notice, to tender amends to the party complaining, or to his agent, and to plead such tender in bar to any action, together with other pleas ; and if the Court shall find the amends sufficient, it shall give judgment for the defendant . . .

Provided always that it shall be lawful for such defendant, by leave of the Court where such action shall be brought at any time before issue joined, to pay money into Court as in other actions.

No. 46 of 1951.

In the Privy Council.

ON APPEAL FROM THE SUPREME
COURT OF CEYLON.

BETWEEN

THE ATTORNEY-GENERAL
OF CEYLON (Defendant) *Appellant*

AND

A. D. SILVA (Plaintiff) . *Respondent.*

CASE FOR THE RESPONDENT.

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