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Supreme Court of Ceylon  
No. 301 (Final) of 1950

District Court, Colombo  
No. 18,416

UNIVERSITY OF LONDON  
W.C.I.

9 FEB 1954

INSTITUTE OF ADVANCED  
LEGAL STUDIES

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

BETWEEN

A. D. SILVA of Castle Street, Colombo.....*Plaintiff-Respondent.*

AND

THE ATTORNEY-GENERAL of  
Ceylon ..... *Defendant-Appellant.*

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RECORD  
OF PROCEEDINGS

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RECORD OF PROCEEDINGS

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No. 1

No. 1  
Journal Entries  
16.9.47 to  
21.3.50.

Journal Entries

IN THE DISTRICT COURT OF COLOMBO

No. 18,416. A. D. SILVA ..... *Plaintiff.*

*Vs.*

Class: (V). ATTORNEY-GENERAL .... *Defendant.*

Amount: Rs. 40,000.

Nature: Money.

Procedure: Regular.

10

*Journal*

The 16th day of September, 1947.

Mr. D. E. Weerasooria files appointment and plaint together with copy of *Gazette* of 21.2.47.

Plaint accepted and summons ordered for 31.10.47.

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

25.9.47. Summons issued on defendant with Precept.

31.10.47. Summons served on the defendant.

Proxy filed.

20

Answer on 28.11.47.

Intld.....  
*District Judge.*

28.11.47. Mr. Trevor de Saram for defendant.

Answer filed.

Intld.....  
*D. J.*

3.12.47. With reference to para. 7 of answer filed, Proctor for defendant moves for a Deposit Note for Rs. 1,068.

Issue.

30

Intld.....  
*D. J.*

5.12.47. Deposit note No. 91,305 for Rs. 1,068 issued.

Intld.....

No. 1  
Journal Entries  
16.9.47 to  
21.3.50.  
—contd.

20.12.47. Kachcheri receipt J/7 1007/45641 of 9.12.47 for Rs. 1,068 filed.

Intld.....  
20.12

2.6.48. As Mr. A. E. Christoffelsz, the Principal Collector of Customs, who is a material witness for the defence in this case is out of the Island and is expected to return on or about the middle of September, 1948, Proctor for Defendant with the consent of Proctor for Plaintiff moves to postpone the trial of the case to another date convenient to Court. 10

Allowed.  
Trial refixed for 13.10.48.

Intld.....  
*District Judge.*

5.10.48. Proctor for defendant files defendant's list of witnesses and moves for summons on them. Proctor for plaintiff received notice.

Allowed.

Intld..... 20  
*A. D. J.*

8.10.48 Proctor for plaintiff files plaintiff's list of witnesses and moves for summons on them with notice to Proctor for defendant.

Allowed.

Intld.....  
*A. D. J.*

8.10.48. Proctor for plaintiff files list of documents with notice to Proctor for defendant.

File. 30

Intld.....  
*A. D. J.*

8.10.48. Summons issued on 11 witnesses by defendant.

8.10.48. Proctor for plaintiff files additional list of witnesses and moves for summons on them.

Proctor for defendant received notice.

File.

Intld.....  
*A. D. J.*

- 11.10.48. Proctor for defendant files additional list of witnesses and moves for summons on them. Proctor for plaintiff received notice.  
Allowed.  
Intld.....  
*A. D. J.*
- 11.10.48. Summons issued on 8 witnesses by plaintiff.
- 11.10.48. Summons issued on 2 witnesses by defendant.
- 10 13.10.48. Trial—  
Mr. D. E. Weerasooria for plaintiff.  
Mr. Trevor de Saram for defendant.  
Vide proceedings filed.  
Further inquiry on 21.1.49.
- 17.1.49. Summons issued on 6 witnesses by defendant.
- 21.1.49. Trial—  
Appearance as on 13.10.48.  
Vide proceedings filed.  
Documents to be filed on 28.1.49.  
Further hearing on 28.2.49.  
Intld.....  
*A. D. J.*
- 20 28.1.49. Case called.  
Mr. D. E. Weerasooria for plaintiff.  
Mr. Trevor de Saram for defendant.  
Documents of defendant filed.  
Plaintiff already filed P1-P4.  
Intld.....
- 28.1.49. Proctor for plaintiff tenders documents marked P1-P4.  
Check and file.  
Intld.....  
*A. D. J.*
- 30 28.1.49. Proctor for defendant tenders documents marked D1-D14.  
Check and file.  
Intld.....  
*A. D. J.*

No. 1  
Journal Entries  
16.9.47 to  
21.3.50.  
—contd.

- 28.2.49. Trial.  
Mr. D. E. Weerasooria for plaintiff.  
Mr. Trevor de Saram for defendant.  
For addresses of Counsel on 16.3.  
Intld.....
- 16.3.49. Addresses.  
Appearance as on 28.2.49.  
Of consent addresses on 4th April.
- 4.4.49. Addresses. 10  
Mr. D. E. Weerasooria for plaintiff.  
Mr. Trevor de Saram for defendant.  
Vide proceedings filed.  
Further hearing 7.4.49.  
Intld.....  
A. D. J.
- 7.4.49. Addresses.  
Vide proceedings filed.  
Judgment on 24.5.49.  
Intld..... 20  
A. D. J.
- 24.5.49. Judgment filed.  
I dismiss plaintiff's action with costs.  
Intld.....  
A. D. J.  
Decree entered.  
Intld.....
- 3.6.49. Mr. D. E. Weerasooria, Proctor for plaintiff-appellant,  
files petition of appeal of the plaintiff-appellant  
against the judgment of this Court dated 24.5.49  
and tenders stamps to the value of Rs. 21 for 30  
certificate and Rs. 42 for Supreme Court decree.  
Stamps affixed to certificate and Supreme Court  
decree form and cancelled.  
Accept.  
Intld.....  
A. D. J.
- 3.6.49. The petition of appeal having been accepted, Proctor  
for appellant moves that he will deposit on 13.6.49  
a sum of Rs. 250 as security for costs of appeal and  
will tender on the same day a sufficient sum of money 40  
to cover the expenses of serving notice of appeal.



Proctor for defendant-respondent received notice.

1. Call on 13.6.
2. Issue voucher for Rs. 250.

No. 1  
Journal Entries  
16.9.47 to  
21.3.50.  
—contd.

Intld.....  
A. D. J.

3.6.49. Proctor for appellant files application for typewritten copies and moves for a paying in voucher for Rs. 25.

Issue.

Intld.....  
A. D. J.

10

6.6.49. Paying in voucher for Rs. 250 and Rs. 25 issued.

Intld.....

13.6.49. Mr. D. E. Weerasooria for plaintiff.  
Mr. Trevor de Saram for respondent.  
Case called—Security.  
Security of appeal is accepted.  
Issue notice of appeal on bond being perfected for 1.8.

13.6.49. Proctor for defendant-respondent files application for typewritten copies.

Issue.

Intld.....  
A. D. J.

20

13.6.49. Principal Collector calls for a copy of the judgment for official purposes. Please see letter No. A. 303 of 13 6/49 from P. C. Copy of judgment is not required.

13.6.49. Proctor for appellant files bond and notice of appeal.

1. File.
2. Issue notice of appeal for the date already given.

30

Intld.....

13.6.49. Notice of appeal issued to W. P.

Intld.....

13.6.49. K.R. A/8 28188 for Rs. 250 filed.

No. 1  
Journal Entries  
16.9.47 to  
21.3.50.  
--contd.

13.6.49. K.R. A/8 28187 for Rs. 25 filed.

Intld.....

1.8.49. Notice of appeal served.  
Forward record to Supreme Court.

Intld.....  
*Addl. District Judge.*

21.3.50. Record forwarded to Registrar, S. C., for typing the  
briefs.

Intld.....  
*Secretary.*     **10**



No. 2  
Plaint of the  
Plaintiff  
16.9.47.  
—contd.

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.

8. The plaintiff has in terms of section 461 of the Civil Procedure Code given due notice to the defendant of his intention to institute this action.

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. 10

Wherefore the plaintiff prays:—

- (a) for an order directing the defendant to pay him a sum of Rs. 40,000 and legal interest from date of action till payment in full;
- (b) for costs;
- (c) for such other and further relief as to this Court shall seem meet.

(Sgd.) D. E. WEERASOORIA,  
*Proctor for Plaintiff.* 20

*The Schedule above referred to*

			<i>Rs. c.</i>
No. 514 Six Sheet Plates	...	...	50 00
No. 517 One wheel	...	...	1 50
No. 519, 287 Earthenware pipes broken	...	...	12 00
No. 520, 159 Sheet Plates	...	...	1,000 00
No. 525 One piece log	...	...	50
No. 588 Five Cratewire	...	...	4 00
			1,068 00

*Documents relied on by the Plaintiff*

- (1) Notice dated 17th February, 1947, published by the the Principal Collector of Colombo appearing in *Gazette* dated 21st February, 1947.
- (2) Correspondence between the plaintiff's Proctor and the Principal Collector of Customs.
- (3) Letter dated 27th May, 1947, written by the Principal Collector of Customs to the plaintiff.
- (4) Letter dated 30th July, 1947, written by the plaintiff's Proctor to defendant. 30

## Documents filed with the Plaintiff

Copy of Government Gazette of 21st February, 1947, marked letter "A".

(Sgd.) D. E. WEERASOORIA,  
Proctor for Plaintiff.

No. 2  
Plaint of the  
Plaintiff  
16.9.47.  
—contd.

(Ceylon Government Gazette—February 21st, 1947.)

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.

- 10 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 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		
20	Serial No.	Vessel		Description
	153/45 ..	"Ismailia" ..	..	1 case stores
	176/45 ..	"Ozarda" ..	..	1 case hardware
	188/45 ..	Unknown of 1945	..	1 case
	198/45 ..	"Brockly Moor" ..	..	1 case
	205/45 ..	"Iris" ..	..	1 case
	248/45 ..	"Kilodonian Park" ..	..	1 bag stores
				1 bag stores
				1 case stores
30				2 cases
				1 bag
				1 case
	254/45 ..	"Strategist" ..	..	2 cases Margarine
	266/45 ..	"Dennywood" ..	..	1 case
	286/45 ..	"Cochrane" ..	..	1 case
	295/45 ..	"Howrah" ..	..	1 case
	301/45 ..	"Drava" ..	..	1 bundle
				1 bundle military uniforms
40	328/45 ..	"Australind" ..	..	1 case
				1 case
	333/45 ..	"Ocean Valentine" ..	..	4 cases
				1 case Service Goods
	337/45 ..	"Ozarda" ..	..	1 case stationery
	356/45 ..	"Fort Ash" ..	..	1 case
	378/45 ..	"J. Harrod" ..	..	1 Heavy Truck tyre with rim
	388/45 ..	Talaimannar train	..	1 parcel leather suitcase
				1 crate personal effects
	399/45 ..	"Troilus" ..	..	2 packages iron
50	390/45 ..	"Sam Louis" ..	..	5 Cartons
	406A/45 ..	"Madura" ..	..	2 cases provisions
	412/45 ..	"Antiloehus" ..	..	1 bag roll bandages
	20/46 ..	"Nizam" ..	..	1 bag sweepings (gram)
	24/46 ..	"Itria" ..	..	1 case pipe fittings
	25/46 ..	"Sam Yale" ..	..	1 case cigarettes
	33/46 ..	"Pegu" ..	..	1 bale socks
	40/46 ..	"Sharistan" ..	..	1 carton machinery
	48/46 ..	"Ocean Fame" ..	..	1 case cine film
	50/46 ..	"Conte Sammex" ..	..	1 case

No. 2 Plaint of the Plaintiff 16.9.47. —contd.	Serial No.	Vessel	Description	
	77/46	.. "Clan Macnair"	.. 1 drum oil 2 drums oil	
	78/46	.. "Clan Macnair"	.. 1 carton books	
	83/46	.. "Fort Frazer" ..	.. 1 bundle cloth 1 case 2 cases 1 drum Lub. oil	
	60/46	.. "Titania" ..	.. 1 case	10
	84/46	.. "Fort Bourbon"	.. 2 cases 2 cases 1 case	
	85/46	.. "Silver Oak" ..	.. 2 bundles iron	
	86/46	.. "Temeraire" ..	.. 1 case machinery parts	
	87/46	.. "Ocean Fame"	.. 3 cases books 1 case bolts and nuts	
	95/46	.. "Falsterbo" ..	.. 7 cases merchandise 1 case merchandise 1 case merchandise 1 case merchandise	20
	96/46	.. "Falsterbo" ..	.. 1 case merchandise	
	127/46	.. "Madura" ..	.. 1 carton sheep tongue 4 cases jam	
	129/46	.. "Nurjahan" ..	.. 1 case 5 cases 1 case	
	144/46	.. "Redel Pacifico"	.. 2 bundles books	
	146/46	.. "Mulbera" ..	.. 13 packages provisions 3 cases food parcels	30
	152/46	.. "Chupra" ..	.. 1 case provisions 5 packages with Government Marks but no other particulars	

## Canal Yard

## UNCLAIMED GOODS

"Changon" ..	1033 packages iron bars	
"Jasper Park" ..	3 packages pipes	
"Congella" ..	5 bundles wood	
"Jalayamuna" ..	5 bundles wood	
"Oaarda" ..	8 bundles Fireclay	40
"San Antonio" ..	1 bundle pin plates	
"Mahanada" ..	6 steel plates	
"Malanche" ..	242 steel plates	
"Maihar" ..	25 steel plates	
"Ettrick" ..	1 wheel	
"City of Canberra"	1 pipe	
"Nadir" ..	287 earthenware pipes (broken)	
"Macharda" ..	159 steel plates	
"Adolph S Ochs"	1 bar T. iron	
"Samaritan" ..	1 steel plate	50
"Nizam" ..	1 bag colour dust	
"Haiyang" ..	26 pieces iron	
"Drava" ..	1 piece log	
"C/o Chester"	14 loose iron plates	
"Jalaldoti" ..	1 crate	
"Nadir" ..	5 coils wire	

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

R. L. JONES,  
for Principal Collector.



No. 3  
Answer of the  
Defendant  
28.11.47.  
—contd.

6. By way of further answer the defendant states as follows:—

(a) that in the notification published in the *Government Gazette* and referred to in paragraph 2 of the plaint the goods to be sold were described as “ unclaimed goods ”;

(b) that in purporting to sell the said goods the Principal Collector of Customs intended to exercise what he in good faith believed were the powers conferred on him by the provisions of the Customs Ordinance (Chapter 185) but the defendant expressly denies that the Principal Collector of Customs in publishing the notification of sale or in selling the said goods acted for or on behalf or with the authority of the Government of Ceylon so as to give the plaintiff a cause of action against the defendant; 10

(c) that at all times material the said goods were not goods which were liable to be sold under the provisions of the Customs Ordinance or otherwise and that the said sale was therefore void;

(d) 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 Disposals 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; 20

(e) that in any event the plaintiff has no cause of action against the defendant;

(f) that the plaint does not disclose a cause of action against the defendant. 30

7. The defendant brings into Court the sum of Rs. 1,068 paid by the plaintiff to the Principal Collector of Customs.

Wherefore the defendant prays that the plaintiff's action be dismissed with costs and for such other and further relief as to this Court shall seem meet.

(Sgd.) C. TREVOR DE SARAM,  
*Proctor for Defendant.*



**Issues Framed**

13.10.48.

ADVOCATE E. B. WICKREMANAYAKE, *K.C.*, with ADVOCATES SAMARAWICKREMA and WEERAMANTRY, for plaintiff.

ADVOCATE M. F. S. PULLE, *K.C.*, with ADVOCATE WEERASURIYA, for defendant.

10 Mr. Wickramanayake opens his case and suggests the following issues:—

(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?

(2) If so, does a cause of action accrue to plaintiff against the Crown?

(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?

20 (4) If so, is the defendant estopped from denying that he had such right and/or authority?

(5) To what damages, if any, is the plaintiff entitled?

Mr. Pulle suggests the following additional issues:—

(6) If issue (1) is answered in the negative, does any cause of action accrue against the defendant as representing the Crown?

30 (7) In selling the goods referred to, did the Principal Collector of Customs act or purport to act in the exercise of his statutory powers under section 108 of the Customs Ordinance?

(8) If issue (7) is answered in the affirmative, did the Principal Collector act for and on behalf of the Crown?

(9) Was there any valid contract entered into between the Crown and the plaintiff for the sale to the plaintiff of these goods?

(10) Was there a common mistake with regard to the nature of the goods which formed the subject of the sale so as to render the contract between the Principal Collector and the plaintiff void and inoperative in law?

40 (The common mistake referred to in this issue relates to the fact that the goods were described as unclaimed.)

- (11) In selling the said goods, did the Principal Collector of Customs have any authority to act as an agent of the Crown so as to bind the Crown to any contract which he may have entered into with the plaintiff for the sale of the said goods?
- (12) Was the refusal of the Principal Collector of Customs to deliver to the plaintiff the said goods wrongful or unlawful so as to render the seller liable in damages for breach of contract?

Mr. Wickramanayake objects to issue (7) and refers to section 108 of the Customs Ordinance. The position taken up by the Crown was that these were unclaimed goods. He submits that if the Crown wants to rely on section 108 they should specifically plead it. There is no provision at all in the Ordinance with regard to unclaimed goods. 10

I do not propose to shut out that issue as it appears to be covered by paragraph 6 (b) of the answer though the Crown might have said more specifically that they relied on section 108. I understand there is no provision in the Customs Ordinance for the sale of unclaimed goods as such, but it is under section 108 that the sale takes place. 20

Mr. Wickramanayake suggests that issue (7) should be altered to read:—

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 Chapter 185 of the Customs Ordinance?

Mr. Pulle has no objection to the amendment, but he says it is under section 108 that the Principal Collector purported to act.

Mr. Wickramanayake objects to issue (10) in regard to common mistake. As far as his client is concerned he says there was no mistake at all. Mr. Pulle alters issue (10) in view of the objection to read as follows:— 30

- (10)a In selling the said goods, did the Principal Collector of Customs sell on the basis that they were unclaimed goods?
- (10)b In purchasing the said goods, did the plaintiff act on the basis that they were unclaimed goods?
- (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? 40
- (10)d If issues a, b and c above are answered in the affirmative, is there a valid contract between the Principal Collector of Customs and/or Crown and the plaintiff?

Mr. Wickramanayake has no objection to these issues. He takes no further objections. I accept all the issues as amended.

## Plaintiff's Evidence

No. 5  
Plaintiff's  
Evidence  
A. D. Silva  
Examination

MR. WICKRAMANAYAKE calls:—

A. D. SILVA, *affirmed*.

I am assistant under my brother who is a contractor. I produce marked P1 an advertisement in the *Government Gazette* by one Mr. Jansz for the Principal Collector of Customs. On the 4th March, 1947, certain goods were landed in the canal yard. I had been to previous sales of this nature, which were also advertised in the *Gazette*, and I had bought articles at those sales. On the 4th March I went to the sale at about 1.30 p.m. Mr. A. R. A. Perera, Preventive Officer of the Customs, conducted the sale. I bought the articles referred to in the morning; the officer made a bill for Rs. 1,068. There were others present at the sale of whom I knew M. P. Mohamed, K. D. Fernando, Masanamuttu Nadar. There were persons bidding for the articles which I bought. I was declared the highest bidder and I made a deposit of Rs. 265, approximately 25 per cent. of the bill. When the goods were bought the Preventive Officer said the sale would be confirmed by the Principal Collector of Customs within three days time and then he will accept the balance money and give delivery order for removal of the goods. The sale was confirmed and I paid the balance Rs. 803 on the 7th March at the Office of the Preventive Officer Mr. Wambeck. I produce P2, the receipt for that amount and P3 the delivery order given to me. When I got the delivery order I went to the wharf and made arrangements to remove the goods in my lorries. When the goods were being removed a clerk of the Wharfage Company turned up and stopped the removal. I showed him the delivery order; on that the wharf clerk made an endorsement to the effect that the goods could be delivered only after further consideration; that was addressed to the Chief Preventive Officer. I took it to Mr. A. R. A. Perera who conducted the sale and he said that these articles belonged to one Maharajah & Co., and the removal was stayed. He then asked me to attend a meeting with Messrs. Maharajah & Co. and the British Stores Disposals Board to be held a day or two later. I did not go myself, I sent my proctor Weerasuriya. Thereafter my proctor wrote a letter to the Principal Collector of Customs on the 12th March, 1947, which I produce marked P4 to which a reply was received. Again Mr. Weerasuriya was asked to represent us at a second meeting. As far as I was concerned I heard nothing thereafter and I instructed my proctor to file action.

These goods were mild steel sheets. There was a market for steel sheets for which we could get Rs. 800 a ton. I had made

No. 5  
Plaintiff's  
Evidence  
A. D. Silva  
Examination  
—contd

arrangements to sell these sheets to one Batcha & Co. and they were prepared to pay us Rs. 8 for a cwt. I did not agree to that price but wanted Rs. 20 a cwt. I now claim damages Rs. 40,000. The total weight was 200 tons which we computed from the measurements.

A. D. Silva  
Cross-  
examination

*Cross-examined.*

(Witness asked to work out on a piece of paper the damages which he claims.) At the rate of Rs. 20 a cwt. for the cost of 200 tons would be Rs. 80,000, but I claim only half of that sum. I was sure of making Rs. 40,000 from offers made to me by Batcha & Co. Delivery was to be taken by Batchas from the canal yard at the spot itself. It would have cost about Rs. 2,000 to remove from the canal yard but it depends on the distance to be carried. Batcha & Co. carry on business in hardware in Old Moor Street. They were also interested in the purchase and sale of steel. 10

Q. Can you suggest why they did not themselves attend this sale by the Customs?

A. They may have overlooked the notification in the *Gazette*. It is also published in the daily papers but the details are given in the *Gazette* only. 20

Masanamuttu Nadar is also a person carrying on business in hardware. He was also present at this particular sale and bid; I do not know why he did not overbid me. He may not have had the money to buy both lots together. I took about Rs. 500 to this sale. I had seen the advertisement in the *Gazette*; we usually get the *Gazette* and look for these things. The goods were described there as unclaimed goods.

Q. You know the Collector of Customs does not carry on any trade or business of selling steel?

A. I do not know that; I know that is not his job; he sells only articles which are described as unclaimed. 30

Q. What did you understand by "unclaimed goods"?

A. Goods not claimed by anyone.

Q. Did you understand that those goods might have belonged to somebody else?

A. I understood they belonged to the Crown because the Crown was selling them. I understood that goods not claimed by outsiders become the property of the Crown.

Q. The articles you purchased included 165 steel plates among other things? 40

A. Yes, including the first item. There were 15 various sizes in the whole lot.

Q. Before you made your offer did you take measurements?

A. I don't have them here; I worked out roughly; I knew the weight per square foot and from that I roughly calculated the total weight. They were stacked one upon another but not in a disorderly manner.

No. 5  
Plaintiff's  
Evidence  
A. D. Silva  
Cross-  
examination  
—contd.

Q. You say the 159 plates were all in one block?

A. Yes, in one block, I counted them roughly. They were of different dimensions, of different thicknesses; I did not measure the thickness also.

10 Q. On what basis did you make the offers?

A. On the weight per ton. I thought roughly there were about 200 to 250 tons. A square foot is about 10 lb. in weight, of 1" thickness;  $\frac{1}{4}$ " thickness would weigh 5 lb.

Q. The sale notice itself gave no particulars of weights or dimensions of the steel plates?

A. No, it showed the lot; I had to make a rough guess as to the weight.

20 Q. When you read the notice in regard to the goods being unclaimed goods, did it strike you that goods might be claimed by somebody?

A. No. I had bought previously similar unclaimed articles and never had trouble. I always got the goods. I did not anticipate trouble in this case, I did not know of any possibility of trouble.

Q. What do you think these goods were brought to Ceylon for?

A. To make culverts, for roof tresses in building work.

Q. According to your idea, in what connection had these goods been brought to Ceylon?

A. That they were imported by merchants for local sale.

30 Q. Did it strike you as to why people who had imported them for local sales had not claimed these goods?

A. No.

Q. According to you, at that time when the goods were published as unclaimed goods, they were of much greater value than what you paid?

A. Yes.

Q. Do you want us to believe that these goods were brought here for local importers for sale and were lying unclaimed?

A. That is what I believed.

No. 5  
Plaintiff's  
Evidence  
A. D. Silva  
Cross-  
examination  
—contd.

*Q.* Besides this sale, how many other sales have you attended for buying hardware?

*A.* About 40 or 50 sales; I have been buying steel plates in other sales, not so big as these, about 20', and have made profits on them. I don't have figures of such profits with me here.

(To Court. What I bought for Rs. 200 I sold for Rs. 1,000; the margin of profit is now the same.)

*Q.* Have you ever bought military or Naval stores?

*A.* I have. Military stores are sold by the B. S. D. B. at auctions.

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*Q.* Having regard to the nature of the sale, did the goods appear to you or not as military or Naval goods?

*A.* If they were military or Naval goods, they would be sold by the B. S. D. B. They have a surveyor for that purpose. I have attended Customs sales before, but never sales of Service goods inside the Customs.

*Q.* What kind of stuff had you bought in the line of iron and steel at such sales?

*A.* Steel rods, steel plates of various dimensions, of smaller size than what I bought in this case. I have been in the iron trade for about four or five years.

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*Q.* You started your iron trade by buying second hand iron goods?

*A.* Yes.

*Q.* During these four years have you formed any idea as to why manufacturers should make steel plates of the dimensions you bought in this case?

*A.* No.

*Q.* What is the biggest dimensions you bought?

*A.* 35' × 8' of 3/8" thickness.

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*Q.* You were surprised to hear that these plates had been brought to effect repairs to damaged battleships?

*A.* I do not know.

*Q.* You say you formed no idea at all of the purpose for which these huge steel plates had been brought to Ceylon?

*A.* No.

*Q.* In any event your idea in buying this was to dispose of it in Ceylon itself?

*A.* To dispose of it anywhere, to a local dealer or exporter, wherever I could get more money.

40

Q. These steel plates were in excellent condition?

A. Yes.

Q. You know there are a large number of people interested in the steel trade in Ceylon like Walkers, Colombo Commercial Co. who are marine engineers, and numerous other firms?

A. Yes.

Q. You cannot understand why firms like these did not come into the scene and bid for these goods?

A. Probably because the sizes were not given in the notification.

10 Q. When you went there you were also surprised?

A. No.

Q. You knew this sum of money you paid was offered back to settle this dispute?

A. Yes.

Q. I put it to you that this Rs. 1,068 was a very small sum of money for an entirely speculative purchase, on the chance of the purchase going through without a claim; even if you did not get the stuff there was always the possibility of your asking for a refund of the money if there was a hitch?

20 A. I would not have been satisfied with a refund.

Q. According to you these articles were worth 40 to 50 times more than what you paid?

A. Yes.

Q. And it was because there was always the fear that some person might turn up and make a claim, or it might not be approved, or even cancelled, that there were no bidders?

30 A. If the sale was not approved I would have got my deposit and gone away. But the conditions of sale were subject to approval in three days time and they accepted the money only after approval. I gave Rs. 265 on the sale day itself and when they approved I had to pay the balance when the sale was confirmed.

Q. If a claimant arrived on the scene on the third day just before the approval, you would be out of it then?

A. Yes, in that case the sale would not be confirmed.

Q. And your bidding would not be for any purpose?

A. Yes, that is business; but in the past the Customs never refused to confirm similar sales.

This notice was read by me; it was signed by R. L. Jones for Principal Collector of Customs giving notice of a sale.

No. 5  
Plaintiff's  
Evidence  
A. D. Silva  
Cross-  
examination  
—contd.

Q. Under what right did you understand the P. C. C. was selling these goods? Did you know under what provision of the law he was selling someone else's goods?

A. As Crown agent responsible for the things in the Customs.

Q. Under what right did you think the P. C. C. was able to do this?

A. He is a responsible Government Servant; I thought he had a right to sell.

Q. Under what provision did he have that right?

A. I did not address my mind to that question.

I thought if he sells everything is all right because before that too I had bought.

Q. If the P. C. C. advertises to sell anything, you thought it was all right?

A. Yes, I thought I could safely go and buy.

A. D. Silva  
Re-examination

*Re-examined.*

I attended a number of these sales before.

Q. Did it matter to you to find out under what right the P.C.C. sold these things?

A. No.

Q. Lots of people attend these sales and as a rule you could get these articles at rates cheaper than market rates?

A. Usually, but sometimes it goes above the market price.

Nadar bid against me and he stopped short of mine. He also bought a lot and he has also filed an action against the Crown.

Q. Can you say why he did not buy these particular articles?

A. I do not know.

Those other sales I went to were also advertised in the *Government Gazette* in the same way.

(Sgd.) N. SINNATHAMBY,  
*Additional District Judge.*

J. S. Parakrama  
Examination

J. S. PARAKRAMA, *sworn.*

I am an Engineer for 23 years, trained in England, a member of the Institute of Mechanical Engineers. I have been advising the Public Trustee's Department as a Consulting Engineer and I am a

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Valuer for the State Mortgage Bank. I have experience in building work. I am Managing Director of Parakrama & Co., a limited liability company dealing in iron structural and general engineering works. I am also their Chief Engineer. They have a subscribed capital of Rs. 3 lakhs. I can speak to prices of steel.

No. 5  
Plaintiff's  
Evidence  
J. S. Parakrama.  
Examination  
—contd.

10 I know the steel bought by the plaintiff at the Customs sale. I was given the dimensions. I valued the market price of this steel at Rs. 30 a cwt., that is Rs. 600 a ton. The list given to me contained about 272 tons, I did not see the stuff. I valued the material on the basis of the measurements assuming that quality would be good. Other varieties of steel have different weights. The first information I had was that these were mild steel sheets. There is only one standard for mild steel sheets, that is the British Standard. Then I was given a number of sheets of different sizes and the square area of each variety, different thicknesses. This steel was of a standard weight. The dimensions were given to me by plaintiff, and on that I made my calculations. The total weight is 272 tons.

Q. How did you calculate the weight?

20 A. Thick sheets, 35 feet long, 8 feet broad and  $\frac{1}{2}$ " thick would weigh 20 lb. per sq. foot; if it is  $\frac{5}{8}$ " thick, 25 lb. and  $\frac{1}{8}$ " thick, 5 lb.

*Cross-examined.*

J. S. Parakrama  
Cross-  
examination

I did not at any time see this stuff, I calculated on particulars given to me by the plaintiff yesterday; I have the paper on which he gave me the dimensions. Prices of steel vary according to the different thicknesses. Mild steel sheets are all of one standard quality; the quality cannot vary and it is manufactured to a standard weight.

30 Q. Can you tell us for what purpose anybody would have brought these plates to Ceylon at all, from the dimensions?

A. Very probably for the purpose of using on ship repairs.

But you can always cut and use them for other purposes. But when they import for other purposes they import smaller sizes. These sheets could be used for constructing water tanks as well. The thickness of steel plates used on water tanks varies according to the quality of water to be stored in the tank.

Q. Do you say 35' × 8' plates would be required for water tanks?

A. Yes, for water tanks in factories and oil mills.

40 Q. Importers do get these sizes in length and thickness, but the market in Ceylon is restricted?

A. Yes. When they are wanted for other purposes they get down 8', 10' plates, &c.

No. 5  
Plaintiff's  
Evidence  
J. S. Parakrama  
Cross-  
examination  
—contd.

*Q.* Having regard to the number of sheets, 159, and there were several other sheets besides these, can you suggest any explanation as to why they might lie in this canal yard? What is your opinion?

*A.* They must have been imported by the Services. (To court. No individual contractor would have imported such large sizes, not even a ship repairing firm.)

*Q.* How do you reckon the price of steel per ton?

*A.* We know the market value because we buy it. When we buy we take delivery sometimes from the seller and sometimes it is delivered to us. Prices vary according to the terms of the contract. 10

*Q.* What is your view of the price when you take delivery from the seller?

*A.* Generally the market price is between Rs. 30 and Rs. 35 per cwt. in 1947; sometimes if there is material in the market we pay Rs. 32 or Rs. 30. Pre-war it was Rs. 7.

In our workshops we cut these into pieces for structural steel work.

I know the Military had large stocks of surplus steel lying all over the Island. Even in this particular case there were hundreds of steel plates lying not only in the canal yard but all over the Harbour and the town. 20

*Q.* The presence of these stocks had no effect on the market?

*A.* We bought them at Rs. 30 a cwt. and fabricated and sold them at Rs. 60 a cwt.

I am not producing any documents to show how the prices are arrived at. I referred to my own stock books and the amount I paid for steel plates. I can produce invoices but I was not asked to produce them.

*Q.* When these sales are advertised, is there keen competition to purchase the stuff? 30

*A.* Yes, among the Nadar people and Ceylonese who have entered this business who buy and export. The Nadar people buy and export to India for steel furnaces. In India there are huge steel works where there is a great demand and they pay very high prices. We have got only foundries for casting. One has to get a licence to export steel. In spite of this demand for steel in Colombo, it is more profitable for Nadars to buy and export to other countries. Services always have these auctions in huge lots involving sums like Rs. 50,000, one lakh and two lakhs. Engineering firms here generally import their stuff according to the quantities they want and they don't go and buy these second hand material; they don't want such large quantities of any particular variety. 40

Q. You are valuing at a lakh what this man bought for Rs. 1,068?

A. He was lucky.

Q. Is it not the fact that going and bidding at the Customs is a highly speculative business?

A. Generally people don't like to go and buy Service articles. There is a lot of trouble. You have to be under obligation to all the clerks and there are all sorts of obstruction and you have to spend more than the amount you actually pay for the articles.

No. 5  
Plaintiff's  
Evidence  
J. S. Parakrama  
Cross-  
examination  
—contd.

10 *Re-examined.*

J. S. Parakrama  
Re-examination

Q. Is there anything in the description that would tempt any engineering firm?

A. This advertisement says 159 steel plates; one might think they were small plates like 2' x 3'; on the other hand, one may make a bargain. From the description, the property would appear to have been imported by the Services. If it was no longer required by the Services for their purposes, it is not impossible that they would not claim it.

(Sgd.) N. SINNATHAMBY.

20 Interval.

13th October 1948.

(After Interval).

S. P. M. HUSSAIN, *affirmed.*

S. P. M.  
Hussain  
Examination

I am the proprietor of Batcha & Co. and I carry on business in Old Moor Street as a Hardware Merchant. I know the plaintiff in this case. I know he bought some steel sheets at a Customs sale. He offered the steel sheets to me. I made an offer. I did not see the sheets before I made the offer but the plaintiff gave me a description of the goods and the dimensions. I made an offer of Rs. 40,000. He wanted to accept that offer but somehow or other something happened. I do business in steel myself. I buy and sell steel.

*Cross-examination.*

I have been in the steel business for 14 years but my business is 40 or 45 years old. I know a large amount of iron and steel came into the country after the Services started coming to Ceylon. There used to be sales held all over Ceylon. The goods that the Services

S. P. M.  
Hussain  
Cross-  
examination

No. 5  
Plaintiff's  
Evidence  
S. P. M.  
Hussain  
Cross-  
examination  
—contd.

sold were sort of goods useful to my firm. I used to be on the lookout for these sales. I have been attending a large number of sales myself. I have also purchased at those sales iron and steel machinery and so forth. Sometimes I pay high prices for them. Sometimes I can sell the articles I buy over and above the prices at which I bought them, but not always. They give the particulars of the articles to be sold. There is a part in the Form known as the "D" part which declares the goods inside a package. I re-sell the stuff I buy to other people here: I also export to India. I look out for *Gazette* notices publishing sales. With regard to the sale in question, I read the notice in the papers and I wanted to attend the sale and buy the stuff but I forgot about it. I did not inquire from the plaintiff for how much he bought the stuff: he will not give out the price. He came the next day and said he bought this stuff. I asked him from where he bought it and he said from the Customs. I did not take the trouble to find out for how much he bought it. 10

(*To Court:* I would have sold the stuff at 100 or 200 per cent. more than what I paid for it; that is to say, about 80 to 120 thousand rupees.)

Plaintiff gave me the list and on it I worked out the quantity and it came to 250 tons or so. I worked out at Rs. 160 a ton and the amount came to about Rs. 40,000. 20

*Q.* When you offered to buy this steel at this price, it did not strike you to have a go at other sales at some other place?

*A.* If there were other sales I would have gone, but this sale I missed. I cannot go for every sale.

*Re-examination.*

Nil.

(Sgd.) N. SINNATHAMBY,  
*Additional District Judge.* 30

**Defendant's Evidence**

Mr. Pulle opens his case. He states that a buyer has first to satisfy himself that a public officer who sells property does so as agent of the Crown in order to make the Crown liable. The mere fact that a public officer sells property does not mean that the Crown is liable. He submits there are decisions in which it has been held that a contract of service entered into between a public officer and a subordinate, having been disregarded by the Crown  
 10 rightly, such a contract did not bind the Crown because the public officer had no authority to enter into a contract on behalf of the Crown. It must be shown not only that a public officer was an agent of the Crown but that he acted within his authority.

He states that certain public officers have to perform statutory functions and it cannot be said that such statutory functions performed by a public officer in a statutory capacity becomes acts of the Crown.

He submits the Court has to draw a distinction between the functions of a public officer which are laid down by the statute and  
 20 functions which are performed purely in his executive capacity. There are various statutes in Ceylon which require public servants to perform certain functions; those functions are governed by various Codes and the source of authority is the legislative instrument. If in the course of that a public officer has to sell property that does not become a sale of property by the Crown as these are statutory contracts. If there has been a departure from the statute, the statute will provide for remedies. In the present case the sale was conducted by the Principal Collector of Customs in the pretended exercise of his powers under the Customs Ordinance.  
 30 He submits that if the Court accepts that a lawful exercise of that power would not create an agency binding the Crown, then *a fortiori* the pretended exercise of that power would not confer on the purchaser any rights against the Crown. In this case even assuming for the purpose of argument that the goods were sold within authority, then an obligation to deliver would arise under the Customs Ordinance; failure to perform that obligation would be a matter which will have to be pursued under the Customs Ordinance.

Mr. Pulle calls—

40 CHARLES LEWIS MEREDITH, *sworn*.

C. L. Meredith  
Examination

I am the Deputy Disposals Officer. This is an office under the Services Disposals Board, which is itself a local branch of the

No. 6  
 Defendant's  
 Evidence  
 C. L. Meredith  
 Examination  
 —contd.

Ministry of Supply in England. I have been in Ceylon since December, 1946, and I have taken charge of the office here. I succeeded Mr. Gaskell who is the Technical Assistant.

I am aware during the period of the war large quantities of Services stuff had come to Ceylon. Even now I am aware that Service stores are lying all over the country awaiting disposal. In fact I am here for that purpose.

Prior to November, 1946, the various units had their own stores departments. In 1946 all were closed down and a list of the stores was handed over to us. I have a certified copy of that document which shows the stores that were taken over by the Ministry of Supplies from all the Services. I produce it marked D1. This is a declaration of the surplus stores and represents the stuff taken over in November, 1946. Among the articles is an item "steel plates of various shapes and sizes, 11,000 tons approximately in the Kochchikade. Maradana and Canal Yard". I had instructions from the Ministry of Supplies in regard to the disposal of stuffs like this. The instructions allowed the Disposals Officer on the spot a certain amount of discretion as to the manner to be adopted to dispose of them. In this particular case we were instructed to ask for offers from recognised Hardware dealers. This was done. The two highest quotations were signalled to Singapore just before my arrival. We got offers for the purchase of these steel plates. From my records I find that two quotations were signalled to Singapore. I came here in December, 1946. The Customs sale took place in March, 1947. During that time this stuff was sold to a firm called Maharaja & Co. They were the highest tenderers. We sold them the stuff on a declaration we had on paper, all approximating 11,000 tons steel plates of assorted sizes. That represented the whole quantity of steel plates mentioned in D1. We sold it at a certain price subject to certain conditions. (*To Court:* The sale price was Rs. 137 per ton.)

With regard to delivery, as we did not know the exact quantity we made arrangements with a firm of Engineers to survey and measure the stuff. It was agreed that delivery should take place over a period of six months and we would raise sale vouchers of Rs. 50,000 at a time. The stuff was measured and surveyed by Walkers. It is their figures we are relying on for final settlement of the bill. It was agreed in the initial stage that delivery should take place over a period of six months. So far as the delivery of the steel plates in the Canal Yard is concerned, Maharajah & Co. found difficulty in getting delivery in the month of March: there was another tenderer. I had nothing to do with the actual transaction; I was the administrative officer. As Deputy Disposals Officer I am aware that the then Chairman of the Disposals Board took

legal advice in the matter; the lawyers were Messrs. Julius & Creasy. We insisted on the stores being delivered only to Maharajah & Co. and not to any other purchaser in the Customs. I did not see these steel plates at any time.

No. 6  
Defendant's  
Evidence  
J. L. Meredith  
Examination  
—contd.

*Cross-examined.*

C. L. Meredith  
Cross-  
examination

10 I have no personal knowledge of this sale to Maharaja & Co. except through records. I know from the records how many steel plates there were. The sale to Maharaja & Co. was confirmed immediately after receipt of the signal from Singapore which arrived in the office on January 23, 1947. There was a written contract. The contract was entered into by Mr. Simon who was then an Assistant in my office. It was merely a sale on voucher of so many thousand tons of steel.

20 (*To Court:* The voucher that gave Maharaja & Co. title to the goods was in the same terms as the declaration, that is approximately 11,000 tons lying in Kochchikade, Canal Yard and Maradana. That was later amended as more information about the details of the material became available but in each amended voucher there was always a reference to the cancellation of the previous one.)

When the contract was made originally we did not know how much was there. What was sold was the entire stock. I know from the records that the entire stock was sold. The 11,000 tons was declared and surveyed by my predecessor who agreed with the Naval Stores Officer to take it at an approximate figure of 11,000 tons.

*Re-examination.*

C. L. Meredith  
Re-examination

30 I have been surveying steel and other goods in Ceylon but not recently. I have five assistants doing the outside work. During the last six months there was only one survey and I did it myself.

Q. How do you make the assessment?

A. We arrange with the service officer, in the case of the R. A. F. the Chief Equipment Officer. For practical purposes a declaration is called for and that will give the quantity of the stores, say so many hundred tons: it may be more or it may be less. We agree with the Service to take it on paper at a certain figure which will be amended when the actual rates are received.

Q. Whatever figure is represented in the document is the figure of the whole stuff?

40 A. Yes. The whole quantity.

I am leaving for England at the end of December 1948.

(Sgd.) N. SINNATHAMBY,  
Additional District Judge.

No. 6  
Defendant's  
Evidence  
A. E. Christo-  
ffelsz  
Examination

A. E. CHRISTOFFELSZ, *sworn*.

I am the Principal Collector of Customs. I am in Grade I of the Ceylon Civil Service. I first assumed duties as Principal Collector of Customs on the 14th of February, 1947. I was once an Assistant Collector at Puttalam.

After I came into office I took an interest in the affairs in the harbour. I knew at that time there was a state of acute congestion in various parts of the port of Colombo—very great congestion as a result of the war and Service stores not being cleared. I wanted space for storing more important cargo than steel sheets and junk. The Chairman Port Commission wanted this removed as quickly as possible for other cargo. I have put into a file all the official papers relating to this action. There is a letter in my file written by the Principal Collector of Customs in 1944 to the Attorney-General: I produce that letter dated 12th April, 1944, marked D2, asking for advice in regard to the sale of Service cargo. The Attorney-General replied by letter dated 18th April, 1944, telling the Principal Collector of Customs that he could not sell any of His Majesty's Stores.

(Mr. Wickramanayake objects to the production of the letter on the ground that it expresses an opinion.

Mr. Pulle states that he is producing the document only to prove the fact that the opinion was given and it forms a matter of record in their files and not to establish the ground on which that opinion was given.

I allow the document to be produced. It is produced and marked D3.)

There is a letter in my file dated the 23rd August, 1945, sent by the Principal Collector of Customs to the Financial Secretary regarding the disposal of service goods to clear the warehouse. I produce this letter marked D4. The Financial Secretary was the officer of State then in charge of the Customs. I had to get his directions from time to time. Under the constitution at that time the Chief Secretary was the person in charge of matters connected with Defence. There is a letter at page 43 of the file from the Principal Collector to the Financial Secretary dated 10th September, 1945, which I produce marked D5 (letter read). As far as I understand there was an arrangement by which the Services were prepared to pay warehouse rent. I produce marked D6, copy of a letter sent to the Flag Officer, Ceylon, dated the 25th February, 1946. It was accompanied by a list, which I produce marked D6a, said to be a statement of cargo lying in the Canal Yard for over three months. Various iron goods are mentioned in this list including steel plates. (Witness reads D6.) Then Principal Collector wrote a letter to the Treasury dated 6th March, 1946, which



I produce marked D7, asking for the approval of the General Officer Commanding being obtained for the disposal of the goods under Section 106 or 108 of the Customs Ordinance. I am aware that the Treasury had correspondence with the Chief Secretary. The Principal Collector was sent copies of the correspondence with the Financial Secretary regarding the disposal of surplus service cargo. There was attached to one of the letters a communication from the Flag Officer Ceylon dated 13th May, 1946, informing the Chief Secretary that the steel tubes and plates lying at the Canal Yard cannot be considered unclaimed cargo. I produce that letter marked D8. On the 26th June, 1946, the Principal Collector sent a letter to the Flag Officer, Ceylon, regarding unclaimed cargo, which I produce marked D9. I also produce marked D9a a list of the goods lying at the Canal Yard. Among the goods are 159 steel plates. I am unable to explain this letter in view of the Attorney-General's opinion that Service goods cannot be sold and also in view of the fact that the Flag Officer, Ceylon, said that the Superintending Officer, Naval Stores, claimed the goods (D8).

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(Further hearing adjourned for 21st January, 1949.)

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(Sgd.) N. SINNATHAMBY,  
*Additional District Judge.*

21st January 1949.

Hearing resumed.

Appearances as on last date.

Errors corrected by consent.

A. E. CHRISTOFFELSZ, *sworn.* (Recalled.)

(Exn. in chief contd.)

On the 28th November, 1946, the Principal Collector of Customs sent to the Chief Secretary a list of goods described as unclaimed Service goods; he asked for the Chief Secretary's approval to advertise the sale of the goods in the *Gazette*. I produce this letter marked D10. D10 was sent by Mr. Davies who was the then Principal Collector. (Letter read.) R. A. S. C. there means the Royal Army Service Corps. To that letter was also attached a list of goods. I produce a copy of that list marked D10a. The reason for asking for the authority of the Chief Secretary in a matter of this kind was because the Chief Secretary was in charge of Defence and he was the channel of communication between the Services and the Government departments. The subject matter of D10 is described as " Disposal of unclaimed Service Goods ". The

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30

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No. 6  
Defendant's  
Evidence  
A. E. Christoffelsz  
Examination  
—contd.

No. 6  
 Defendant's  
 Evidence  
 A. E. Christo-  
 ffelsz  
 Examination  
 --contd.

Principal Collector of Customs received letter dated 24th/27th December, 1946, in reply to D10, which I produce marked D11. That is also headed " Disposal of unclaimed Service cargo ". Our proposal to advertise the sale of the unclaimed Service cargo was approved by D11. I am aware that the sale of the goods which forms the subject matter of this case was approved by the Deputy Collector of Customs Mr. Money Penny on 7th of March, 1947. On the 10th of March, 1947, I received a letter from the British Stores Disposals Board stating that all the steel at Canal Yard were the property of the Ministry of Supply. I produce that letter marked D12. I was at this time the Principal Collector of Customs (letter read). By this time the sale had already taken place: the sale had been confirmed on the 7th. I also received a letter from Messrs. Julius & Creasy, writing on behalf of the Stores Disposals Board, dated the 22nd April, 1947. I produce that letter marked D13. (Letter read.) Between the date of approval of the sale and this date, steps were taken to bring about an amicable settlement. As soon as I knew something was wrong I tried to get all the parties together: that is, the Stores Disposals Board, Maharajan & Co. purchaser from the Stores Disposals Board and the plaintiff in this case who was represented by his Proctor, and the other one was Vasunamuttu Nadar who is the plaintiff in the connected case. The efforts at settlement fell through and this case was filed.

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A. E. Christo-  
 ffelsz  
 Cross-  
 examination

*Cross-examination.*

My predecessor in office was Mr. R. M. Davies. R. L. Jones is one of the Assistant Collectors. I had no experience of Customs work before. I had done a little Customs work at Puttalam, but that was nothing compared to the Customs work here. When this sale took place I was the Principal Collector. When the goods were advertised for sale too I was in that office. I was not aware of the advertisement and the sale till the trouble arose. My predecessor had previously written about the sale: I was not aware of that correspondence till it was discovered that Maharajan & Co. had already purchased the property. My assistants must have been aware. Mr. Jones was aware; he signed the notice. I am not sure whether he was aware of the previous correspondence because that was dealt with by the Deputy Collector and the Landing Surveyor. I was not even aware that the property was advertised. After this trouble occurred I was aware that the property was advertised and sold. Mr. Money Penny was the Deputy Collector of Customs at that time. I am aware that he has approved of the sale. These goods were lying in Canal Yard in the Customs premises and were lying there for some years. I have no previous experience of these sales myself under the Customs Ordinance. I am aware these sales are regularly held. The money that is obtained from these sales is credited to revenue. I am not sure whether this particular money was credited to revenue because

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of the dispute. The purchaser sometimes has to make a deposit before removal of the goods. I do not know whether the money deposited in this case has been credited to revenue. He paid the balance. He also produced the delivery note "Please deliver the goods as the sale was approved by the Principal Collector". I cannot give any first hand evidence on this point except from what I find in my files.

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Defendant's  
Evidence  
A. E. Christof-  
ffelsz  
Cross-  
examination  
—contd.

10 Mr. Jones was the Assistant Collector. He was a Government servant. These goods were advertised by him in the course of his official Government duties. The other members of the Customs are also Government officers. I was not present at any of these sales myself. I am not aware that goods are generally bought cheap at these sales. What really happens is the sale is not approved until a report is made as to their value. The value paid by the plaintiff was approved.

(*To Court:* That is to say in the eyes of the Customs it was a fair valuation for the goods sold. All the valuations are done by the Customs appraisers. I must say that it is a very bad appraisalment.)

20 I know a lot of property are sold by the Services generally at a cheap figure.

The correspondence between my department and the various officers all that was not known to the plaintiff. I might say one thing: the other person Vasunamuttu Nadar might have been aware of this. I understand he was a clerk of Maharajan & Co. I do not know whether he has any connection with the plaintiff in this case. Both of them bought at the same time.

*Re-examination*—Nil.

(Sgd.) N. SINNATHAMBY,  
*Additional District Judge.*

30 C. L. H. PAULUSZ, *sworn.*

C. L. H.  
Paulusz  
Examination

I was then in the Customs. I am now Assessor, Income Tax Department. I have been in Public service from 1934. I have held staff appointments from 1934. My first appointment was Assistant Assessor, Income Tax Department.

40 I remember accepting office under the Customs Department. That was in August 1944. I went there as an Acting Landing Surveyor. From 1944 to January 1947 I was in the Customs Department, shortly before the sale of the goods which form the subject matter of this action. As a Landing Surveyor I was in charge of the Warehouses, the Baggage Office and the Preventive Office. I know, as a result of the war space in the Wharf became an acute question. The wharfs were congested with a large quantity of service goods

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 Defendant's  
 Evidence  
 C. L. H.  
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 Examination  
 —contd.

which had not been cleared. I was aware that there were service goods lying at the Canal Yard and at Kochchikade for some considerable time, mostly I know they were steel goods. I explored means of getting rid of the congestion. To begin with we wrote to the Service authorities. At this time I was personally aware of an opinion expressed on behalf of the Attorney-General that the Principal Collector of Customs or the Customs Officer had no authority to sell Service goods under the Customs Ordinance. That is the document marked D3 dated April, 1944. The matter was under correspondence with the Treasury in 1945

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(Shown D5): I am aware of this letter, it was during my time. I am also aware of the letter dated 25th February, 1946 (D6). That letter was sent to the Services: it was signed by the Principal Collector, then Mr. Davies. Then there was a letter sent (D7) again to the Treasury wherein we reported the position. G. O. C. is General Officer Commanding. As a result of the correspondence a letter came to my notice in which the Admiralty said that the steel tubes and plates in the Canal Yard did not represent unclaimed cargo of that branch of the Service. That letter was sent to the Principal Collector's Office by the Chief Secretary. When that letter came I did not become aware of it immediately. My next minute is about a week later: about a week's time of that letter coming I became aware of its contents. That letter came to our office on the 30th May, 1946. Before that letter came steps were still being taken to find out means of relieving the congestion at the Yard. An Inventory was being prepared at that time. We were preparing a list of the goods and identifying them. After that letter of the 30th May, 1946, came to our office there was a letter sent out again on the 26th June, 1946. That is the letter marked D9. It is signed by the Principal Collector himself, Mr. Davies. At the time it was sent I was not aware that it was being sent. I saw a copy of that letter only after it had been despatched. I say that letter ought to have gone through me in the first instance because the practice was if anybody suggested any action to our superior it went through the hands of the staff officer dealing with the matter. The procedure would have been more correct if this letter had been submitted to Mr. Davies' signature through me. Had that letter been sent through me I would have checked it with the earlier contents of the file. In this case I would not have sent that letter in that very form in which it was sent: I would not have described it as unclaimed cargo because there had been a claim earlier, that is D8.

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Q. Were replies received to all the letters that were sent to the Services—Ultimately, yes.

To this particular letter we got only two replies; they were from the Army and a section of the Navy: not the Flag Officer. Neither

of the services claimed any goods, that is, the Army and that particular section of the Navy. The Navy said the stuff had been inspected and the steel was the property of the Superintending Civil Engineer's Department. The Army said: "It is now confirmed that all R. A. F supplies mentioned in your letter have now been cleared".

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Defendant's  
Evidence  
C. L. H.  
Paulusz  
Examination  
—contd.

10 (To Court: I could not say whether the Superintending Civil Engineer is only concerned with the maintenance and erection of Naval Establishments and so on or whether he has anything to do with Naval Stores.)

I know the letter that was sent to the Chief Secretary asking for permission to sell what is called unclaimed Service cargo (D10).

Q. Will you kindly explain how that letter went out from your department?—I had made a suggestion on the 17th November as regards the disposal of this stuff and on that, after the P. C. C's approval, the clerk put up the letter to the Principal Collector suggesting the sale of these goods. That is to say, the letter was in form D10.

20 I was not aware of that letter going out; the proposal was mine but I did not see the form of the letter. My proposal exactly was I wanted a list of the unclaimed cargo sent to the Chief Secretary and copies to the Service authorities explaining what had happened in the past and asking for authority to sell what was not required by them. I meant "unclaimed cargo" in the sense they did not say this is our property, don't sell it.

Q. Supposing they did not want the property, how will you call that?—My suggestion was that we should get the authority to sell it.

30 Q. If the owner says "I don't want" the next step is to sell them?—I was trying to prepare a list of the unclaimed cargo.

Q. How did you propose to prepare that list?—In the first instance we will get a list of Service cargo lying about the place, then check that with our correspondence, find out if anything had been claimed and omit that. That was what I intended to do myself.

(To Court: My suggestion to the Principal Collector was we should inform the Chief Secretary and the Financial Secretary of the replies we had received and therefore propose to advertise the goods for sale, sending copies to the three branches of the Services and asking for approval.)

40 Q. Has your suggestion been carried out by D10?—Yes, it has in intent. Copies were not sent to the Service chiefs.

No. 6  
 Defendant's  
 Evidence  
 C. L. H.  
 Paulusz  
 Examination  
 —contd.

The letter in its wording is somewhat similar to what I had in mind. I minuted to the Principal Collector.)

(Mr. Pulle marks a copy of the minute made by the witness dated 17th November, 1946, D14.)

(Shown D8): This refers to certain definite property lying at Canal Yard claimed by the Flag Officer: that is, that it was not unclaimed cargo. Besides Service goods claimed by the Admiralty there were other Service goods also lying at Canal Yard and at Kochchikade. At the time when these letters were written to the Chief Secretary and the Treasury we had other problems also before we saw to the disposal of the goods lying at the Canal Yard and Kochchikade irrespective of the branch of Service to which the goods belonged. We were not only concerned with the disposal of the stuff belonging to the Admiralty but also the other branches which had goods. At that time it was hard to find any branch of the Services. There were numerous branches. Each branch had semi-branches. I could not say definitely in all about how many branches had properties of their own; roughly about four or five I should say. When D10 was written I had in mind the goods of all Services. It never occurred to me at any time irrespective of the Services to which the goods belonged, to sell any of these goods if they were claimed by the Services.

C. L. H.  
 Paulusz  
 Cross-  
 examination

*Cross-examination.*

Q. You say in effect that somebody in your office made a blunder?—I could not say that definitely.

Blunder in what way?

Q. He made a mistake?—Yes.

The Landing Surveyor is in charge of the Baggage Office, Preventive Office and the Warehouse. He more or less acts as officer in charge of those branches. The Baggage Office deals with passengers, that is, levying Customs duty on their baggage and articles that are liable for duty. The Preventive Office is to prevent smuggling. The Warehouse is where the main cargo comes from ships and deposited. Appraising their value is not part of the duties of the Landing Surveyor: only inventorising and disposal of cargo. All payments are made in the main building, I have nothing to do with that. Before goods are allowed to be removed they got to produce a receipt of payment.

The disposal of unclaimed cargo was within my duties. I know Mr. Jones. He was Assistant Collector. His duty was to assist the Landing Surveyor in various and also appraising work. He is a subordinate of the Landing Surveyor.

(*To Court:* I was acting for the Landing Surveyor. Mr. Jones worked under my direction so far as my part of the work was concerned. So far as the appraising was concerned he worked under the Deputy Collector.) I was in the Customs up to the end of January, 1947. I believe there was an interval when there was no Landing Surveyor and thereafter I think Mr. Jones was appointed Landing Surveyor. I presume he was acting for the Landing Surveyor. I cannot say definitely. In February, 1947, I had left the Customs. I know he was appointed thereafter.

No. 6  
Defendant's  
Evidence  
C. L. H.  
Paulusz  
Cross  
examination  
—*contd.*

- 10 These goods belonged to the three branches of the Services under the Crown. I have had occasion to sell goods of others under the Customs Ordinance. They were advertised for sale in the *Government Gazette* and sold by public auction. The sale had to be approved; that is to say the goods have got to be valued by the Appraiser. If the value is a fair one the sale is confirmed.

(*To Court:* If the value is not fair the sale is not confirmed. The conditions of sale provide for all that. If the sale is not confirmed a refund is made of the deposit if a deposit has been taken.)

- 20 If the sale is confirmed a delivery order is issued to the purchaser and he takes delivery. In this particular case I am not aware whether the sale was confirmed. I am not aware that in 1948 the Tender Board called for tenders for stuffs similar to this. I very rarely look at the *Government Gazette*. Mr. Jones also had access to these files. The plaintiff in this case had no access to these files.

*Re-examination.*

I referred to the three services as services of the Crown. The three services are the R. A. F., the Army and the Navy. What I mean is the Imperial Service.

C. L. H.  
Paulusz  
Re examination

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(Sgd.) N. SINNATHAMBY,  
*Additional District Judge.*

The learned Solicitor-General asks for permission to file certified copies of the documents which have been produced in the case as the originals are required by the Customs authorities with the files. Mr. Wickramanayake has no objection. I allow the application. Let the documents be filed before the next date of hearing.

No. 6  
Defendant's  
Evidence

The learned Solicitor-General asks that he be allowed to address on a subsequent date after the filing of the document. Mr. Wickramanayake agrees. The case is put off for further hearing on 28th February, 1949.

Documents to be filed on 28th January, 1949.

(Sgd.) N. SINNATHAMBY,  
*Additional District Judge.*



**Addresses to Court**

4th April, 1949.

Appearances as before.

MR. PULLE, Acting Attorney-General, addresses Court.

Thinking over this matter I came to the conclusion that it would be better in the first instance for me to enunciate certain legal principles and their applicability to the facts of this case. There is no contest in respect of the evidence in the case. The first point I stress is that this is an action against the Crown and on a contract. Admittedly there is no formal document of contract which expressly purports to bind the Crown. Court would have seen a large number of Crown contracts. Although there is a document advertising the sale of goods and signed by the Principal Collector of Customs there is no formal contract which expressly binds the Crown. It is also clear, and it is not disputed, that whoever sold the plates of steel on P1 was a public servant bearing the name of office, a Customs officer. It is the essence of this case for plaintiff to succeed to prove that there is privity of contract between himself and the Government of Ceylon. Attorney-General is merely the instrument by which the defendant is represented in Court. My first submission is that while the officers of the Customs are public servants, while I am prepared to concede that under certain circumstances public servants may be expressly authorised by the Crown to enter into transactions, public servant does not become the agent of the Crown. The burden is on the plaintiff. Court is aware the Crown may have as agent not necessarily a public servant. Anybody else having the authority of contract between Crown and the opposite parties can bind the Crown. I say that the mere fact of a public servant happening to sell some articles would not thereupon bind the Crown in that sale. He must be further a person authorised to enter into a contractual agreement in regard to the sale. Under the Code to recover maintenance or fines the Magistrate, who is also a public servant, can issue a distress warrant. On the distress warrant a sale is held. You may have both these characteristics in those transactions, public servant figuring all along and the qualities of a sale vendor and vendee and yet could it be argued for a moment that because it was a public servant, Magistrate, who authorised this sale, that the sale of the goods would bind the Crown. It must be a sale which brings into

existence contractual rights between vendee and Crown. These are marked as unclaimed goods. You have various statutes where the Principal Collector of Customs, who is not the owner of goods, is empowered to sell. There is not the slightest doubt that P1 describes the goods as unclaimed goods. Plaintiff knows that goods lying about are advertised and sold. He had attended previous sales and has bought. The Municipality under some statute is given a right to capture furniture and put them on sale. It may be that even the Municipality can be held liable if the Municipality was a vendor in an ordinary purchase and sale transaction. It may be that the particular person who sold had committed an infringement of the right of the person owning the goods. I am prepared to concede that if without authority he sold the goods to the vendee, then between himself and the vendee there may be a personal liability. Supposing on a distress warrant issued by a Magistrate a Fiscal was authorised to seize the property of Jones and sell and instead of selling Jones' property he seized erroneously the property of Smith and put up a sale and it was bought by X for Rs. 500. Supposing before delivery the statutory officer discovered that he had sold the property of Smith and told X, I am sorry I cannot deliver the goods; I have made a mistake; you can have your Rs. 500. This is what the Crown has done. It went into Crown's Treasury. With the illustrations given how could one look at the facts and say that because a person who happened to be a public servant had a right under the statute to make a sale, that man who bought Smith's property entirely due to a mistake of the selling officer can make out this case: you are a servant of the Crown: you purported to sell goods of Smith; it is a matter of indifference to me whose goods you sell; I hold you liable. A statutory right exercised by a public servant, even if it had been properly exercised, the Crown would not be liable. Crown should act within the statute. Crown cannot be held responsible for a wrong committed by the statutory officer. Public servant who acts within the statute is not an agent. If a driver of a government lorry acting within the scope of his employment were to knock down a wall or kill a person; if he has no defence the advice is to make an ex gratia payment.

He cites *Tobin v. Queen*, 143 *English Reports*, at page 1148. He refers to page 1156—argument of Counsel, and page 1162—judgment. This judgment has been followed expressly in a Privy Council case (1901) *A. C.* page 561. He refers to page 574 (bottom) and page 575.

(Interval.)

(Sgd.) N. SINNATHAMBY,  
Additional District Judge.

4th April, 1949.

(After Interval.)

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Addresses to  
Court  
—contd.

MR. PULLE continues his address :

He submits that a person who is affected by the act of a public officer who acted under the statutory powers should in the first instance look at the relevant statute. If the officer acted properly then there is no action against him or against anybody else. If he did not act properly there will be some sort of provision in the statute under which the aggrieved party could claim relief. At  
10 the worst there may not be that provision; then he could one of the courses of law. He would ask how the damage was suffered: was it as a result of negligence by a public officer: is there an action against him as a result of a breach of the provisions of the law. On that point *see section 108, Cap. 185, Vol. IV, p: 531*. This is the section referred to in the correspondence.

If the goods are sold and purchase money obtained then clearly if section 108 was the section under which the officer acted, an obligation to hand over the goods arises by implication. See also  
20 sections 148, 149 and 150. There is provision to proceed against an officer who fails to perform a duty under the Ordinance.

He submits in this case the Attorney-General is not really appearing for any Customs officer. This argument is not quite germane because these sections will come into play if and when it is argued that the customs officer was in breach of a duty. This argument is addressed only to show that there is provision available for an aggrieved party to proceed. Although in this particular case the Attorney-General is not defending the customs officer it might be even argued that where a statute provides a particular remedy that remedy alone is to be resorted to and not any other remedy. There  
30 is a long line of cases on that point.

He cites 1898, Appeal Cases, p. 307

1947, 1 All England Reports, p. 242.

1947, 2 All England Reports, p. 24.

If the customs officer were defendant in this case it might still be open to them to argue that the Customs Ordinance is a complete Code. If that argument is accepted *a fortiori* it strengthens the case of the Crown in this case. If there were any particular matter for relief to be sought that is a remedy to be pursued and not this regular action.

40 Mr. Pulle submits that his third line of authority is this: he would ask the court to be astute, so to speak, before holding that

the Crown is liable. One has got to be very strict in finding whether certain acts are within the proper jurisdiction so as to bind the Crown.

He cites 47 N.L.R. p. 385 also 392 (bottom).

The question whether the goods were claimed or not makes no difference on this point: that the Customs officer was informed by the Attorney-General acting as the civil adviser of the Crown that he had no authority to sell goods of the Services. He sold that in spite of the fact that he was fixed with the knowledge that the Admiralty wrote and said all these steel goods were not unclaimed goods. In other words they were goods claimed by them. To that extent the authority goes. 10

There was a contract of sale but no sale. Section 108 appears to contemplate a case where during a period of three months no warehouse dues have been paid. Customs duty would be paid under section 23, p. 498, as amended by Ord. 32 of 1941. In view of section 108 and the earlier arguments the Crown would not be liable.

The 47 N. L. R. case was cited in support of the proposition that when an officer is told he should not do an act and he does it then he is acting contrary to the wishes of Government. He must act within the limits of his authority. Authority may be mandate or by statute. In the 47 N. L. R. case it was an administrative authority. If there are administrative regulations then the revenue officer cannot override the regulations and enter into a contract binding the Crown. If the regulations are there then he must conform with those regulations and enter into the transaction. The business of Government for example has to be done by a whole series of standing orders, rules and regulations made from time to time within executive bounds. He submits his arguments are addressed on the point of statutory authority where the authority is not derived administratively from head of a department or from a Minister but it is from the legislature. In this case there was a mandate in the form of an opinion. The mandate flows from the legislature and not from the principal. To show how the courts in England approached this question, he cites— 20

1896, 1 Q. B. D., p. 116.

1944, 1 All England Reports, p. 700.

1945, 1 All England Reports, p. 329 also at p. 337.

With regard to the evidence there is very little to add. D3 is the Attorney-General's letter of 17th April, 1944. Letter D4 was written on the 23rd August. P6 speaks of the disposal of the goods under the Customs Ordinance. This shows in this matter the Principal Collector of Customs purported to act under the statutory provisions—see last para. of P7. D8 is letter whereby the Admiralty 40

informed the Chief Secretary which was communicated to the Principal Collector. This letter and the Attorney-General's letter put together gives a clear mandate not to sell. P9 is the letter where the blundering started. D10 speaks of disposal of unclaimed service goods: now they got on to the wrong track. D11 again is head disposal of unclaimed service goods. Naturally the Chief Secretary said if it is unclaimed service goods you had better sell them. D12 gives the date of sale to Maharajan & Co. namely in January, 1947. D13 is the letter of Julius & Creasy which sets out the legal position correctly.

No. 7  
Addresses to  
Court  
—*contd.*

Mr. Pulle does not address me on the question of mutual mistake. He states that he is not abandoning it. Issues are 10 (a), (b), (c) and (d).

MR. SAMARAWICKRAMA addresses me in reply:

With regard to the letters referred to plaintiff is not bound by them. These are letters which passed between the Principal Collector and certain other officers which the plaintiff was not aware of and on which he cannot possibly be bound. He submits that the court is not bound by any expression of opinion so far as the opinion of the Attorney-General goes: it is nothing more than an inter-departmental correspondence. It only shows his state of mind and it is not open to the Attorney-General to issue a mandate to the Principal Collector. He cannot give a command of that kind because he is not in any higher position so far as the Crown was concerned. The Principal Collector was in charge of a department. Any letter of the Attorney-General will not amount to putting an end to the authority which the Principal Collector had; that letter will not amount to withdrawal of that authority. The last three cases the Attorney General cites are utterly irrelevant.

Plaintiff has pleaded the question of estoppel. There was the customs sale advertisement to sell these particular goods. It was open to the Principal Collector to enter into a contract of sale to sell these goods. He refers to the Sale of Goods Ordinance Vol. II, p. 191, section 13. Both parties are presumed to have known the law. The offer was made to prevail because there was the representation of right to sell the goods. That representation has got to be made good.

The principle dealing with this question of estoppel is at Hails-ham Vol. XIII, p. 400. 45 N. L. R. 297. The Principal Collector was acting throughout as the agent of the Crown in advertising the sale and causing the goods to be sold. The Crown is bound by the sale.

(Further hearing adjourned for 7.4.49.)

(Sgd.) N. SINNATHAMBY,  
*Additional District Judge.*

7th April 1949.

Appearances as before.

MR. E. B. WICKRAMANAYAKE addresses Court:

He submits this is a simple case. The contract is admitted. The only question is whether the Principal Collector of Customs is an officer of the Crown and was the act by him an act done within the scope of his employment.

The authorities cited by the learned Attorney-General do not support his case. They all deal with acts done by officers outside the scope of their authority. Quite clearly the Principal Collector of Customs is a public servant appointed by the Government to perform certain functions. *Prima facie* therefore when he acts in the exercise of his functions he acts as a public servant. His powers may be defined either generally or particularly. In this case they are governed particularly by the statute. What the statute says is authority given by the Government and if the Government authorises the Customs officer to perform certain functions it gives him authority. 10

Section 108 has nothing to do with non-payment of dues. That may be the reason for the sale. If goods have been lying in the Customs premises for more than three months the Principal Collector of Customs is entitled to sell them. In the present case there was an advertisement: this did not speak of any warehouse dues. The evidence is that these sales are regularly held. There is no evidence to say that warehouse rent was due. It cannot be said that no duty is recoverable from the Admiralty. The Admiralty is not the Crown: Crown is the Crown in Ceylon. 20

He cites 16 N. L. R. 194.

There is no evidence that this property belonged to the Imperial Government. War Office is an incorporate body. 30

The only evidence led by the Crown is of some documents to show that somebody instructed the Principal Collector of Customs not to sell and the Crown says it is a mandate not to sell.

At the time of the sale the property belonged to Maharajan—see evidence. The relevant section is section 19, Rule (iii). So far as the Court is concerned it makes no difference whether it is a contract of sale or a sale itself.

The opinion expressed by the Attorney-General is no authority. The order must come from the Government.

He cites 4 Ceylon Weekly Reports, p. 78 at 82, 87; 40

25 N. L. R. 321;

19 Law Journal 115.

With regard to sections 148, 149 and 150 of the Customs Ordinance they only say that if anybody wants to sue a public officer he must give him notice and bring an action within two months. The Crown has made certain blunders and the Crown must pay for those blunders. The contract is a contract and the liability is on the Attorney-General's Department.

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Court  
—contd.

Mr. Weerasooriya with permission refers to 143 English Reports page 1163.

Judgment on 24th May, 1949.

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(Sgd.) N. SINNATHAMBY,  
*Additional District Judge.*

## Judgment of the District Court

## JUDGMENT

In this case the plaintiff sues the Attorney-General of Ceylon as representing the Government of Ceylon for damages in a sum of Rs. 40,000 which he claims is due to him in the following circumstances: It would appear that certain steel plates and other goods were lying in Canal Yard within the Customs premises for some considerable length of time and the Principal Collector of Customs decided to sell them by public auction on the 4th of March, 1947. He accordingly advertised the goods in the *Government Gazette* of the 21st February, 1947, a copy of which (P1) was produced. A sale was held as advertised and the plaintiff became the purchaser of the lots described in the schedule to the plaint for a sum of Rs. 1,068. He deposited approximately one-fourth of the purchase price as required by the conditions of sale. The sale was in due course confirmed and even a delivery order was issued in favour of the purchaser (P3). When the purchaser went to take delivery of the goods after payment of the balance purchase price he was prevented from doing so by a wharf clerk. On inquiry the purchaser was informed that the goods belonged to one Maharajan & Co. and he was requested to attend a meeting with the Collector of Customs and the representative of the British Stores Disposals Board. The goods it would appear belonged to the British Stores Disposals Board and they had entered into an agreement to sell it to Maharajan & Co. The Principal Collector offered to pay back the purchase price to the plaintiff purchaser but the latter insisted upon delivery and as he could not get it, instituted the present action. On the evidence of the plaintiff and Mr. Parakrama it is clear that the goods were worth very much more than the price paid at the sale and that by reason of the failure of the Principal Collector of Customs to give delivery the plaintiff has suffered damages in the amount claimed.

With regard to the facts connected with the sale and the subsequent events referred to earlier there is no dispute. The Crown, however, took up the position that the Principal Collector did not act within his authority in selling the said goods so as to bind the Crown. It was contended that he purported to act in the exercise of certain statutory powers conferred upon him by the Customs Ordinance and that if he acted in excess of those powers the Crown would not be liable. Furthermore, it was also contended that even if he did act within the statutory powers given him by the legislature, the Crown would still not be liable upon the contract.



The evidence led on behalf of the Crown shows that the goods in question belonged to the Navy and were deposited in the said warehouse for the use of the Navy. Evidence was given by Charles Lewis Meredith who was Deputy Disposals Officer under the Services Disposals Board which is a branch of the Ministry of Supply in England. According to his evidence, prior to November, 1946, several Units had their own separate Stores Departments. After that date all goods were taken over by the Ministry of Supplies from the Services and among them were the plates in question.

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21.5.49.  
—contd.

- 10 They appear in document marked D1 produced by the said Officer including the 11,000 tons of steel plates stated to be lying in Kochchikade, Maradana and Canal Yard. According to this officer, it would appear that on the instructions of the Ministry of Supply all this steel was sold to Maharajan & Co. at Rs. 137 per ton, but with regard to delivery, arrangements were made with a firm of Engineers to survey and measure the stuff and provision was made for delivery over a period of six months. His evidence further shows that when the contract was made the Ministry of Supply did not know the actual quantity available but they fixed it at approximately 11,000 tons, but payment was to be made after the goods were measured and weighed at the rate of Rs. 135 a ton. It will thus appear that the agreement was only an agreement to sell and that the property in the goods would have passed only after the goods had been measured and taken delivery of. This of course, 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. The property in the goods was therefore in the original consignee namely the Naval authorities or the British Stores Disposals Board at the time of the auction sale
- 20 by the Principal Collector.
- 30

- The sale notice describes the goods as unclaimed goods but the evidence shows that even prior to the sale the goods had been claimed by the Naval authorities and there was in fact a letter to that effect in the files of the Principal Collector relating to this subject (vide D8 dated 13th May, 1946). In that letter the Flag Officer, Ceylon, claims "the steel tubes and plates in the Canal Yard" and states that arrangements are being made to have them removed as opportunity occurs. The letter expressly states that the goods do not represent unclaimed cargo. 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. Several letters passed between the Principal Collector and the Financial Secretary also with regard to the matter and it was suggested that the sale should be effected under sections 106 and 108 of the Customs Ordinance. I see that section 106 makes no reference to a sale but section 108 does. The Principal
- 40

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Collector, had he been sufficiently careful, would have found in his files sufficient material to conclude that the goods belonged to the Services. There was in the files of the Principal Collector an opinion given by the Attorney-General that a sale under the Customs Ordinance could not be effected in respect of Service property which was property belonging to the Crown. Whether that opinion was right or wrong this court is not concerned with at the moment, but the letter was produced to show that there was in existence such an opinion and despite it, under the mistaken belief that the property was unclaimed even by the Services, the sale was effected. The sale was so advertised and according to the correspondence with the Chief Secretary (vide D10) the Principal Collector came to the conclusion that the property was unclaimed and decided to sell it. 10

In order to ascertain the powers vested in the Principal Collector under the Customs Ordinance it will be useful to examine the scheme of that Ordinance. All goods unladen from a ship shall immediately be taken to a King's warehouse and within three clear days the importer is required to make a full and complete "entry" thereof and shall either pay down all duties due and payable or shall duly warehouse the said goods (vide section 36). In other words immediately goods are landed it is open to the importer either to make an entry, pay the duty and take delivery of the goods, or make an entry to warehouse the same either for re-export or for delivery on a subsequent date. If no entry is made within the three days and the goods taken delivery of, it becomes liable for double rent. Section 49 provides for the manner in which the Bill of Entry should be made and indicates that an entry may be made either for payment of duty or to be warehoused. A Bill of Entry duly signed by the Collector and transmitted to a proper officer shall be the warrant for such officer to examine and give delivery of the goods. There is then provision for payment of duty and procedure to be adopted if the goods are undervalued. Section 82 provides that all goods warehoused either for home use or exportation shall be cleared within two years from the date on which they were warehoused; after that period they may be again entered to be warehoused on payment of duty on deficiency and warehouse rent, but where the goods are not cleared or re-warehoused or duties on deficiencies not paid under section 83, the Principal Collector is authorised to sell them. Obviously Service goods would not come under those provisions. There has been in respect of them no bill of entry and this is made clear from correspondence that passed between the Principal Collector on the one hand and the Financial Secretary and the Chief Secretary on the other. If an entry had been made the Principal Collector would not have regarded the property as unclaimed goods. Where goods are entered for home use they should be cleared under the provisions of sections 86 and 87. Then comes the general regulations under Part IX of the 20 30 40

Customs Ordinance. Section 104 authorises the Principal Collector to detain goods upon a notice given him by a master or agent of a ship in respect of which freight, primage, general average or other charges have not been paid. Sub-section (4) provides that where goods are so deposited for a longer period than 90 days such goods shall be sold by public auction and the proceeds applied first to the payment of duties, warehouse rent and so on and then to the payment of freight, primage, general average, &c. Any balance is to be paid to the owner. Provisions of section 104 it is thus clear

10 apply only to goods which have been detained at the request of the master pending payment of freight, general average and so on. It would not apply to the goods in question as there is no evidence that the master made any such notification to the Principal Collector. Then comes section 108. It provides that all goods left in a King's warehouse for a longer period than three months shall be sold "by auction" to answer the dues, warehouse rent or other charges due thereon. Under this provision therefore the Principal Collector has the power to sell only for the purpose of recovering

20 duties, warehouse rent and other charges due upon goods which remain more than three months in a King's warehouse. When this provision is considered in the light of earlier provisions referred to, it seems to me that it applies only to goods in respect of which no entry has been made by an importer, owner or consignee, because if an entry has been made and the goods warehoused under the provisions of section 82, the Principal Collector does not appear to have the power to sell till the two years have elapsed. It is perhaps for this reason that when goods are advertised for sale under the provisions of section 108 they are described as unclaimed goods. They would, after the lapse of three days, become liable

30 under section 36 to double rent and it seems clear to me that the Principal Collector's power of sale under section 108 only applies to goods in respect of which no one has come forward and made an entry within the three months. If all the conditions required have been complied with, the Principal Collector would be empowered and authorised under section 108 to advertise and sell the goods. In the case of an ordinary consignee there would be no difficulty: he would be liable for duty, warehouse rent, &c., 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

40 case, however, the goods clearly are goods belonging to the Crown and imported for the 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 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

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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. They were not sold on the basis that the property belonged to the Services and as the Services had not paid warehouse rent was selling them in order to recover rent. They were sold on the footing that the owner of the property could not be traced, that there were no claimants to the property and that they were occupying much wanted space in the Customs premises. Although it was known that the property belonged to one branch of the Services, and on that point there seems to be no doubt from the correspondence, the Principal Collector was unable to trace to whom they actually belonged, and it was in order to relieve the congestion that he sought to sell the goods, not in order to answer the duties, warehouse rent and other charges. I do not think it was the Principal Collector's view that any such charges were payable in respect of property which he himself describes as Service goods but unclaimed. If he 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. Furthermore, it was contended for the Crown that he purported to act not in an executive capacity but under certain statutory powers vested in him by section 108 of the Customs Ordinance.

The learned Solicitor-General who argued the case for the Crown referred to an authority reported in 143 English Reports, Common Pleas, page 1148 (Tobin v. The Queen). In that case which was referred to with approval in Law Reports 1901 Appeal cases p. 561, a Naval Officer purporting to act in pursuance of a statutory authority wrongly seized a ship of the suppliant which he thought was engaged in the slave trade. Under the law he was entitled to take the ship to the nearest port of Admiralty: he was not given the power to destroy the vessel but in the exercise of his own discretion he decided to destroy the vessel and did so. The suppliant brought an action against the Crown for damages. It was held that the facts showed a wrong for which an action might lie against the officer but not a complaint in respect of which a petition of right could be maintained against the Crown because the officer in seizing the vessel was not acting in obedience to a command of Her Majesty but for the supposed performance of a duty imposed upon him by an Act of Parliament and in such a case the maxim "respondeat superior" did not apply. In this particular case too the authority to sell is a statutory authority given to the Principal Collector under the provisions of the Ordinance. If

he acts entirely outside the scope of his authority would the Crown be bound? Suppose for instance by some mistake, or even deliberately, he sells or causes to be sold property in respect of which all charges dues and duty had been paid, would that sale give good title to the purchaser so as to entitle him to maintain an action either as against the true owner or as against the Crown? If he acted *mala fide* such a cause of action would be against the officer concerned and not against the Crown; if however, he acted *bona fide* and within the scope of his authority then it may be that the Crown would be liable (4 Ceylon Weekly Reporter p. 78 at p. 87). It is to be noted that the cause of action is based upon a breach of contract and the Crown would be liable only if the alleged agent of the Crown, namely, the Principal Collector, acted within the scope of his authority. The sale as I have endeavoured to show was not for the purpose for which the Principal Collector was authorised to effect a sale, namely, to recover dues, warehouse rent, &c.; it was obviously in order to prevent congestion 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. He was under the impression that although the goods belonged to the Services no particular branch made any claim to it. In so acting, although he purported to act under the provisions of the Customs Ordinance, he had no authority to do so. It has been held in several cases that where an officer of the Crown acting beyond the scope of the authority entered into contracts with others, the Crown is not bound, for example, contracts of service (vide *Dunn v. Queen*, 1896, 1 Q. B. D., p. 116; also *Rodwell v. Thomas* (1944) 1 A. E. R., p. 700). In this connection vide also *The Attorney-General v. Wijesuriya*, 47 N. L. R. p. 385, wherein a passage from the opinion of the Privy Council delivered in 8 Moore's Indian Appeals, p. 554, to the effect that "the acts of a Government officer bind the Government only when he is acting in the discharge of a duty within the limits of his authority" was cited with approval. In this case the authority is by statute and as I have shown the Principal Collector acted outside the authority granted him by the Customs Ordinance.

For the plaintiff it was argued that the Crown was estopped from denying that the goods were goods which the Principal Collector had authority to sell by reason of the fact that he had so advertised it in the *Gazette* (P1). Reference was made to section 13 of the Sale of Goods Ordinance which states that there in a contract of sale an implied condition on the part of the seller that in the case of a sale he has a right to sell the goods. This question of estoppel, however, would not, it seems to me, affect the case as against the Crown; it may be that if it were possible to sue the Principal Collector he would be estopped. In point of fact in illustration 1 given

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in Chalmers to section 12 of the Sale of Goods Act (this is the same as section 13 of our Ordinance) reference is made to a sale of horses by auction and the auctioneer by mistake selling a horse which was not intended by the owner to be included. When the mistake was pointed out delivery was refused. It was held that the auctioneer was liable in damages. Estoppel if at all will thus be as against the Principal Collector and not against the Crown where the Crown's agent does not act strictly within the authority given.

I answer the issues framed as follows:—

10

- (1) He purported to act for the Crown but outside the scope of his authority.
- (2) No, in view of my answer to (1).
- (3) Yes.
- (4) No.
- (5) Nil.
- (6) No.
- (7) Yes.
- (8) No.
- (9) No.
- (10) (a) Yes.
- (b) Yes.
- (c) Yes.
- (d) 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.

20

I accordingly dismiss the plaintiff's action with costs.

(Sgd.) N. SINNATHAMBY,  
*Additional District Judge.*

30

Judgment delivered in open Court in the presence of Proctors.

(Sgd.) N. SINNATHAMBY,  
 24.5.49.

**Decree of the District Court**

DECREE

No. 18416/M

IN THE DISTRICT COURT OF COLOMBO

A. D. SILVA of No. 1, Castle Street, Colombo ..... *Plaintiff.*

*Against*

ATTORNEY-GENERAL of Ceylon, Colombo ..... *Defendant.*

10 This action coming on for final disposal before N. Sinnetamby, Esq., Additional District Judge, Colombo, on the 24th day of May, 1949, in the presence of Proctor. . . on the part of the plaintiff, and of Proctor. . . on the part of the defendant, it is ordered and decreed that the plaintiff's action be and the same is hereby dismissed with costs.

(Sgd.) N. SINNETAMBY,  
*Additional District Judge.*

The 24th day of May, 1949.

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to the Supreme  
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No. 10

**Petition of Appeal to the Supreme Court**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

D. C. (F) 301M/1950

D. C. Colombo No. 18416/M

A. D. SILVA of Castle Street, Colombo ..... *Plaintiff-Appellant.*

*Vs.*

THE ATTORNEY-GENERAL of Ceylon,  
Colombo .... *Defendant-Respondent.*

*To :*

10

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

On this 3rd day of June, 1949.

The Petition of appeal of the Plaintiff-Appellant above named appearing by his Proctor, Durand Edgar Weerasooria, states as follows:—

1. The plaintiff-appellant brought this action against the defendant as representing the Government of Ceylon for damages for breach of a contract entered into by him with the Principal Collector of Customs in his capacity as a public officer acting for and on behalf of the Government. The plaintiff stated that he purchased certain steel plates and other articles at a public auction sale held by the Principal Collector, paid the purchase price and obtained a delivery order but was refused delivery of the said goods. 20

2. The defendant-respondent filed answer admitting the sale and the refusal to make delivery of the articles purchased, but raised several technical and legal defences. *Inter alia* he pleaded that the Principal Collector in advertising and holding the sale was not acting for and on behalf of the Government of Ceylon. 30

3. After trial the learned District Judge made an order on 24th May, 1949, holding that the Principal Collector had acted outside the scope of his authority in the transaction in question, and dismissed plaintiff's action with costs.

4. Aggrieved by the said order the plaintiff-appellant begs to appeal therefrom to Your Lordships' Court on the following among other grounds that may be urged by Counsel at the hearing of the appeal.



- (a) The said order is contrary to law and against the weight of evidence.
- (b) The sale in question was held by the Principal Collector in his capacity as a public officer and therefore acting on behalf of the Government. The finding that the Principal Collector acted outside the scope of his authority is erroneous and unjustified.
- 10 (c) The plaintiff-appellant submits that in any event the Principal Collector had ostensible authority from the Government to hold the sale and the Crown is therefore liable on the contract entered into.
- (d) The learned District Judge has misdirected himself in using as evidence against the plaintiff-appellant letters that passed between departments of Government and an opinion of the Attorney-General regarding all of which the plaintiff had no knowledge at all. This evidence had been led ostensibly on an issue of mistake which was abandoned at the stage of address and thereafter illegitimately used to support the defendant's case on the other issues in regard to which it was not relevant or admissible.
- 20 (e) The learned District Judge has misdirected himself in holding that the Customs Ordinance does not empower the Principal Collector to hold a sale under the circumstances in which the sale in question was held.
- (f) The appellant further submits that the learned District Judge has misdirected himself in supposing that authority to sell steel plates for and on behalf of the Government must necessarily be contained in a statute and in failing to consider whether in all the circumstances the Principal Collector had not such authority. It is submitted that any reference by the Principal Collector to sections of the Customs Ordinance in letters of which the plaintiff was totally unaware is not binding on the plaintiff.
- 30 (g) It is submitted that the learned District Judge has put an entirely erroneous significance on the words "unclaimed goods" contained in the advertisement of sale and those words are no more than descriptive.
- 40 (h) It is further submitted that the learned District Judge erred in rejecting the plea of estoppel as the notification in the *Ceylon Government Gazette* by the Principal Collector was in his capacity as a public officer acting for the Government and not otherwise.

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Wherefore the plaintiff-appellant prays that Your Lordships' Court may be pleased—

- (a) to set aside the judgment and order of the learned District Judge ;
- (b) to enter judgment in favour of the plaintiff as prayed for in the plaint ;
- (c) for costs;
- (d) for such other and further relief as to this Court shall seem meet.

(Sgd.) D. E. WEERASOORIA, 10  
*Proctor for Plaintiff-Appellant.*

**Judgment of the Supreme Court**

S. C. 301-M

D. C. (F) Colombo No. 18416-M

*Present:* DIAS S.P.J and GUNASEKARA, J.*Counsel:* H. V PERERA, K.C., with G. T. SAMARAWICK-REMA and G. L. L. DE SILVA for the plaintiff-appellant.

10 H. W. R. WEERASOORIYA (Acting Solicitor-General), with WALTER JAYAWARDENE, C. C., for the defendant-respondent.

*Argued on:* May 3, 4, 10 and 11, 1951.*Delivered on:* May 31, 1951.

DIAS S.P.J.

20 During the Second World War when Ceylon became a theatre of operations, and eventually the head-quarters of the South-East Asia Command, large quantities of service goods from overseas were brought into the Island and for lack of space were dumped in various parts of the country, including the Customs premises in Colombo. Amongst these goods were about 11,000 tons of steel plates of assorted sizes. This action relates to a part of those goods, estimated as being about 250 or 272 tons.

30 After the cessation of hostilities, the Colombo Customs authorities required the space occupied by these service goods which had been imported into the Island free of customs duty—see section 22 of the Customs Ordinance (Chapter 185). Section 17 of the Customs Ordinance and the regulations made thereunder (see Volume 3 of the Subsidiary Legislation of Ceylon, pages 151 to 157) provide for the levying of warehouse rent in respect of “ all goods ” irrespective of whether they are public or private property. It was conceded by the learned acting Solicitor-General at the argument that these steel plates even though exempted from import or export duty would, nevertheless, be liable to warehouse rent. Section 108 of the Customs Ordinance empowers and authorizes the Principal Collector of Customs after public advertisement to sell goods which are lying in the customs premises for a period longer than three months in respect of which warehouse rent is due.

The evidence shows that so far back as 1944 the Principal Collector of Customs was inconvenienced by these service goods and

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he had been trying to ascertain whether he would be justified in selling them under the provisions of section 108—see D2 and D3. He wrote to the Financial Secretary in 1945—D5. On February 25, 1946, he addressed the heads of various service units requesting them to clear the articles claimed by them. On March 6, 1946, the Principal Collector complained to the Financial Secretary that there was no improvement in the position—D7. He said “ The continued presence of these packages in the warehouses not only lessens storage essential for other cargo, but also affects the sanitation of the warehouses. . . . In the circumstances I invite reference to my letter of 10.9.45 and request that the General Officer Commanding’s approval may be obtained to dispose of the articles under sections 106 or 108 of the Customs Ordinance ”. By D9 dated June 26, 1946, the Principal Collector notified all Service heads that he proposed to dispose of these goods under the Customs Ordinance as they “ appear to have been abandoned ”. By D10 dated November 28, 1946, the Principal Collector informed the Chief Secretary of Ceylon through the Financial Secretary that he proposed advertising these goods for sale. *By his letter D11 of December 27, 1946, the Chief Secretary approved the proposal of the Principal Collector to advertise and sell the goods.*

Thereupon by *Gazette Notice P1* dated February 21, 1947, the Principal Collector intimated that “ the undernoted articles which have been lying in the Customs premises will be sold by public auction on Tuesday, March 4, 1947. . . . ” The plaintiff having seen this notification attended the auction and purchased the steel plates for the sum of Rs. 1,068. He duly paid his deposit and eventually the balance of the price, but when he tried to take delivery he was prevented from so doing. It appears that in the interval the Services Disposals Board which is a local branch of the Ministry of Supply of the Imperial Government had sold these goods to a firm called Maharaja & Co. The plaintiff now sues the Attorney-General of Ceylon, as representing the Crown in Ceylon, for breach of contract claiming Rs. 40,000 as damages. The District Judge dismissed the plaintiff’s claim.

The submissions of the learned acting Solicitor-General on behalf of the Crown may be summarised as follows: (a) Having regard to the evidence in the case the Solicitor-General was prepared to concede that warehouse rent had become due in respect of these goods; but he contended that they could not be sold under section 108, for the reason that they had been imported into Ceylon and left in the warehouse by the Crown, and the Crown is not bound by section 108. (b) He submitted that even if the Principal Collector of Customs had authority under section 108 to sell the goods, such sale could not in law bind the Crown because, in acting under section 108, the Principal Collector was performing a statutory duty, and was not acting as the servant or agent of the Crown. (c) Counsel

further contended that no action lies against the Crown in this case for the further reason that the Customs Ordinance itself (sections 148-150) provided the remedy available to this plaintiff, namely to proceed against the Principal Collector of Customs.

The liability of the goods to be sold depends, however, 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,  
10 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.

“ The Crown ” in the various countries forming the British Commonwealth of Nations cannot carry on public business without revenue. The chief sources of revenue of the Government of Ceylon are Income Tax, Estate Duty, Excise duties, Stamp duties, the duties on Salt, the income from the Railway, the Post Office, the Pearl Fisheries, and the Customs duties levied on imports and exports, &c.—see *Walter Pereira's Laws of Ceylon* p. 58. These  
20 revenues are collected by the servants of the Crown acting through various departments. “ The various Government offices and Departments through the medium of which the general executive administration of the country is carried on, owe their creation and present internal organization largely to the direct exercise of the discretionary authority of the Crown as the head of the executive. But though this is so, the constitution of the more modern departments, and the powers and duties of the various officers and functionaries of whom their staff is composed, as well in the modern as in the older departments, are now principally regulated by direct parliamentary enactment or by Orders in Council issued under statutory  
30 authority ”—*6 Laws of England (Hailsham Edition)* p. 675. In other words “ public servants ” when carrying out their duties are precisely what their designation means. They are public agents of the Crown.

The Customs Department of Ceylon is a revenue collecting department of the Crown. It is not an incorporated body, and is therefore not a distinctive legal *persona* which can sue or be sued under its own name. The official head of the Customs Department is the Principal Collector of Customs. He is a public servant remunerated from the public revenue. Therefore, when the Principal  
40 Collector acts under section 108 of the Customs Ordinance he is obviously not acting on his own behalf or for his private benefit, but on behalf of someone else. Who is the person? Obviously it is the Crown to whom the warehouse rent was due.

Section 17 and the Regulations made thereunder empower the Principal Collector to levy warehouse rent even on goods which are exempted from import or export duty. The learned Solicitor-

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General does not dispute this. Therefore, warehouse rent was due in regard to the goods in question. That being so, under section 108 the goods were available to be sold for non-payment of warehouse rent. The Solicitor-General argues that under section 108 the Principal Collector does not act as the servant or the agent of the Crown but is acting under statutory powers.

I am unable to accede to this argument. Clearly the Principal Collector when acting under section 108 is not acting for his own benefit, or on behalf of the owner of the goods from whom warehouse rent was due. He is acting solely for and on behalf of the Crown to whom the warehouse rent is due. Section 108 clearly empowers the Principal Collector to enter into contracts, to sell goods to another. This action is for a breach of such a contract. 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. It being conceded that there has been a breach of contract, the question is whether the plaintiff's remedy is against the Principal Collector as contended by the Solicitor-General, or against the Attorney-General? 20

In Britain the Crown cannot be sued in contract. The procedure to obtain redress against the Crown for a breach of contract is by what is called "a petition of right". On the other hand in Ceylon the Crown can be sued in contract—*Siman Appu v. Queen's Advocate*<sup>1</sup>. Therefore, in all cases of alleged breach of contract by the Crown, unless there exists some statutory bar, the action must be instituted against the Attorney-General as representing the Crown. 30

Does an action lie against *a servant of the Crown personally* for an alleged *breach of contract* entered into by him in his official capacity and not for his personal benefit? The law on this point is clear and can thus be summarised: Where a public officer enters into a contract in the *bona fide* exercise of the powers of his office, any action in regard to such act must be against the Attorney-General as representing the Crown, and not against the public officer personally—*Singer Sewing Machine Co. v. Bowes*<sup>2</sup> following *Muttupillai v. Bowes*<sup>3</sup>. If the Crown desires to sue the subject in contract, it is the Attorney-General, and not the public officer who entered into the contract on behalf of the Crown, who must sue—*Assistant Government Agent, Chilaw v. Velappuhamy*<sup>4</sup>. If, however, the public servant acted without authority, actual 40

<sup>1</sup> 9 A. C. 571 Privy Council.

<sup>2</sup> (1917) 4 C. W. R. 78.

<sup>3</sup> (1914) 17 N. L. R. 453.

<sup>4</sup> (1922) 5 T. L. R. 34.

or ostensible, or where there has been no holding out by the Crown of that public servant as its agent, the maxim *respondeat superior* cannot apply, and no action will lie against the Crown in such circumstances—*Arachchille v. Kira* <sup>1</sup>, *Deen v. Attorney-General* <sup>2</sup>, *Wijesuriya v. Attorney-General* <sup>3</sup>.

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10 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. 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.

20 Mr. H. V. Perera for the appellant cited certain passages from *Robinson on Public Authorities* (1925 edition) page 8 *et seq.* The law in England appears to be the same as in Ceylon. Robinson says (at p. 8): “As regards contracts entered into by a servant of the Crown in such capacity, he is under no personal responsibility, unless he expressly contracted to be personally liable”.

30 At page 9 he says, “An agent who purports to contract on behalf of a private person may be held liable in an action for breach of an implied warrant that he had authority so to contract, if in fact he had no authority, or if he exceeded any authority which he had. In *Dunn v. Macdonald* <sup>4</sup> it was sought to make the defendant, who was a public servant acting on behalf of the Crown, liable on this ground; *but it was held that the doctrine was not applicable in the case of public servants acting on behalf of the Crown.*” The writer points out at page 10 “The principles underlying and justifying the immunity of servants of the Crown was stated as follows by Dallas C.J. . . . . ‘On principles of public policy an action will not lie against persons acting in a public character and situation, which from their very nature would expose them to an infinite multiplicity of actions. The very liability to an unlimited multiplicity of suits would in all probability prevent any proper or prudent person from accepting a public situation at the hazard of such peril to himself’”.

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!

<sup>1</sup> (1884) 6 SCC 22.

<sup>2</sup> (1923) 25 N. L. R. 333.

<sup>3</sup> (1950) 51 N. L. R. at pp. 366-367.

<sup>4</sup> (1897) 1 Q. B. 555.

(In Ceylon the remedy by petition of right does not lie—*Jayawardene v. Queen's Advocate* (1881) 4 S. C. C. 77)

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Finally, it was submitted for the Crown that the plaintiff's remedy in this case was provided by sections 148-150 of the Customs Ordinance. 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

I am, therefore, of opinion that the learned District Judge has reached a wrong conclusion, and that his judgment must be set aside. The facts of this case are not in dispute and therefore this Court is in as good a position as the Court of trial to reach a conclusion on the facts and law.

On the question of damages, there is an expert engineer, and a person who made an offer to the plaintiff to buy the goods, who prove that the amount 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.

20

The judgment and decree of the District Court are therefore set aside. Judgment will be entered in favour of the plaintiff appellant for a sum of Rs. 40,000 as prayed for with costs both here and below.

(Sgd.) R. F. DIAS,  
*Senior Puisne Justice.*

GUNASEKARA, J.—I agree.

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



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31.5.51.

Decree of the Supreme Court

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

IN THE SUPREME COURT OF THE ISLAND  
OF CEYLON

A. D. SILVA of Castle Street, Colombo. .... *Plaintiff-Appellant.*

*Against*

10 THE ATTORNEY-GENERAL of Ceylon .....  
..... *Defendant-Respondent.*

Action No. 18416/M District Court of Colombo.

This cause coming on for hearing and determination on the 3rd, 4th, 10th, 11th and 31st days of May, 1951, and on this day, upon an appeal preferred by the plaintiff-appellant before the Hon. Mr. R. F. Dias, LL.D., Senior Puisne Justice, and the Hon. Mr. F. H. T. Gunasekara, Puisne Justice of this Court, in the presence of Counsel for the Appellant and Respondent.

20 It is considered and adjudged that the judgment and decree of the District Court of Colombo be and the same are hereby set aside and it is ordered that judgment be entered in favour of the plaintiff-appellant for a sum of Rs. 40,000 as prayed for with costs both here and below.

Witness the Hon. Sir Edward George Perera Jayetileke, Kt., K.C., Chief Justice, at Colombo, the 6th day of June, in the year of our Lord One thousand Nine hundred and Fifty one, and of Our Reign the Fifteenth.

Sgd. W. G. WOUTERSZ,  
*Deputy Registrar, Supreme Court.*

No. 13  
Application for  
Conditional  
Leave  
to appeal to the  
Privy Council  
15.6.51

No. 13

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

**IN THE SUPREME COURT OF THE ISLAND OF CEYLON**

A. D. SILVA of No. 1, Castle Street, Colombo .....  
..... *Plaintiff-Appellant.*

*Vs.*

THE ATTORNEY-GENERAL of  
Ceylon ..... *Defendant-Respondent.*

S. C. 301 D. C. (F) 18416/M.

THE ATTORNEY-GENERAL of  
Ceylon ..... *Respondent-Petitioner.*

10

*Vs.*

A. D. SILVA of No. 1, Castle Street,  
Colombo ..... *Appellant-Respondent.*

On this 15th day of June, 1951.

*To:*

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

The petition of His Majesty's Attorney-General of Ceylon, the  
Respondent-Petitioner above named appearing by Clifford Trevor  
de Saram, his Proctor, states as follows:— 20

1. That feeling aggrieved by the judgment and order of this  
Honourable Court pronounced in this case on the 31st May, 1951,  
the above-named Respondent-Petitioner is desirous of appealing  
therefrom to His Majesty the King in Council.

2. That the said judgment is a final judgment and the matter  
in dispute on the appeal is of the value of over Rupees Five thou-  
sand.

3. That notice as required by rule 2 of the Schedule to the  
Appeals (Privy Council) Ordinance (Cap. 85) was duly given to the  
Appellant-Respondent above named on the 2nd day of June, 1951. 30

Wherefore the Respondent-Petitioner prays for conditional leave  
to appeal against the said judgment of this Court dated the 31st day  
of May, 1951, to His Majesty the King in Council.

(Sgd.) TREVOR DE SARAM,  
*Proctor for Respondent-Petitioner.*

No. 14

**Decree granting Conditional Leave to Appeal to the Privy Council**

No. 14  
Decree granting  
Conditional  
Leave  
to appeal to the  
Privy Council  
22.6.51

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

THE ATTORNEY-GENERAL of  
Ceylon ..... *Respondent-Petitioner.*

10

*Vs.*

A. D. SILVA of No. 1, Castle Street,  
Colombo ..... *Appellant-Respondent.*

Action No. 18416/M (S. C. No. 301—(F) ) District Court of  
Colombo.

In the matter of an application dated 15th June, 1951, for Condi-  
tional Leave to Appeal to His Majesty the King in Council, by the  
Respondent-Petitioner above named, against the decree dated 31st  
May, 1951.

20

This matter coming on for hearing and determination on the 22nd  
day of June, 1951, before the Hon. Mr. E. F. N. Gratiaen, K.C.,  
Puisne Justice, and the Hon. Mr. E. H. T. Gunasekara, Puisne  
Justice of this Court, in the presence of Counsel for the Respondent-  
Petitioner.

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—

30

Deposit in terms of 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).

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. Sir Edward George Perera Jayetileke, Kt.,  
K.C., Chief Justice, at Colombo, the 27th day of June, in the year  
of our Lord One thousand Nine hundred and Fifty-one, and of Our  
Reign the Fifteenth.

40

(Sgd.) W. G. WOUTERSZ,  
*Deputy-Registrar, Supreme Court.*

No. 15  
Application for  
Final Leave to  
appeal to the  
Privy Council  
3.7.51.

## No. 15

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

IN THE SUPREME COURT OF THE ISLAND OF CEYLON  
A. D. SILVA of No. 1, Castle Street, Colombo .....  
..... *Plaintiff-Appellant.*

Vs.

THE ATTORNEY-GENERAL of  
Ceylon ..... *Defendant-Respondent.*

S. C. 301 D. C. (F) 18416/M.

THE ATTORNEY-GENERAL of  
Ceylon ..... *Respondent-Petitioner.*

10

Vs.

A. D. SILVA of No. 1, Castle Street,  
Colombo ..... *Appellant-Respondent.*

To :

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUSTICES OF  
THE HONOURABLE THE SUPREME COURT OF THE ISLAND OF CEYLON

On this 3rd day of July, 1951.

The petition of the respondent-petitioner above named appearing  
by Clifford Trevor de Saram, his Proctor, states as follows:—

20

1. That the respondent-petitioner on the 22nd day of June, 1951,  
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 31st day of May, 1951.

2. That in the order granting conditional leave to appeal Your  
Lordships' Court directed that the same was allowed subject to the  
usual conditions, but the conditions in rule 3 (a) of the Rules in  
the Schedule to the Appeals (Privy Council) Ordinance were not to  
apply.

3. That the Respondent-Petitioner has on the 27th day of June,  
1951, deposited the sum of Rs. 300 in 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 afore-  
said Ordinance.

30

Wherefore the Respondent-Petitioner prays that he be granted  
final leave to appeal against the said judgment of this Court dated  
the 31st day of May, 1951, to His Majesty the King in Council.

(Sgd.) TREVOR DE SARAM,  
*Proctor for Respondent-Petitioner.*

## No. 16

**Decree granting Final Leave to Appeal to the Privy Council**

No. 16  
Decree granting  
Final Leave to  
appeal to the  
Privy Council  
13.7.51.

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

THE ATTORNEY-GENERAL of  
Ceylon ..... *Respondent-Petitioner.*

*Vs.*

10 A. D. SILVA of No. 1, Castle Street,  
Colombo ..... *Appellant-Respondent.*

Action No. 18416/M (S. C. No. 301—(F) ).

In the District Court of Colombo

In the matter of an application by the Respondent-Petitioner above named dated 3rd July, 1951, for Final Leave to Appeal to His Majesty the King in Council against the decree of this Court dated 31st May, 1951.

This matter coming on for hearing and determination on the 13th day of July, 1951, before the Hon. Mr. E. F. N. Gratiaen, K.C.,  
20 Puisne Justice, and the Hon. Mr. E. H. T. Gunasekara, Puisne Justice of this Court, in the presence of Counsel for the Applicant.

The Applicant having complied with the conditions imposed on him by the Order of this Court dated 22nd June, 1951, granting Conditional Leave to Appeal.

It is considered and adjudged that the applicant'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 Edward George Perera Jayetileke, Kt.,  
K.C., Chief Justice, at Colombo, the 18th day of July, in the year  
30 of our Lord One thousand Nine hundred and fifty-one and of Our Reign the Fifteenth.

W. G. WOUTERSZ,  
*Deputy-Registrar, Supreme Court.*

## PART II

## EXHIBITS

## D 2

**Letter from the Principal Collector of Customs to the  
Attorney-General**

My No. A. 303  
Yr. No. E. 106/44

Attorney-General,

I regret that the facts given in my letter of 9th March were not adequate. The position is that considerable quantities of Services cargo have from time to time been left in the Customs premises beyond the period allowed under sections 104 and 108 of the Customs Ordinance (Cap. 185). In particular, a quantity of heavy goods consigned to the Naval Stores Officer have been left for varying periods on public quays, jetties, wharves, or landing places so as to interrupt the free use thereof, contrary to the intention of Section 115 of the Ordinance. The question to be determined is whether the provisions of the above sections and of D (M) R. 31 can legally be enforced in respect of cargoes consigned to Military, Naval, or R. A. F. units.

(Sgd.) H. S. M. HOARE,  
*Acting P. C. C.*  
12.4.1944.

## D 3

**Letter from the Solicitor-General to the Principal Collector of  
Customs**

My No. E. 106/44  
Your No. A. 303 of 12.4.44

P. C. C.

Section 3 of the Interpretation Ordinance (Cap. 2) provides that:—

“ No enactment shall in any manner affect the right of the Crown unless it is therein expressly stated, or unless it appears by necessary implication that the Crown is bound thereby ”.

Exhibits

D 2  
Letter from the  
Principal  
Collector  
of Customs to  
the Attorney-  
General  
12.4.44.

D 3  
Letter from the  
Solicitor-General  
to the Principal  
Collector of  
Customs  
18.4.44.

This statutory provision in regard to the rights of the Crown is a codification of the rules of English law that the Crown is not bound by a statute unless named therein. It has been held in England that if one section of the statute expressly binds the Crown, it does not follow that any other section in the same statute binds the Crown and that the words " named in a statute " really mean named in the section, the provisions of which are sought to be applied in the circumstances of the particular case under consideration. Any special reference to the Crown in any law is deemed to be *ex majori cautela* and does not affect the application of the general principle stated above. It follows that exemptions in favour of the Crown in a statute do not prevent the Crown from claiming exemption from other provisions of the law in which no exemption is made in favour of the Crown. To the general rule that the Crown is not bound by a statute, there are certain exceptions: e.g. statutes which are for the public good and for the avoidance of fraud, &c. Such considerations do arise in this case. Applying the principles set out above to the sections in regard to which you have sought my advice, it would appear that the Crown is not bound by sections 104, 108 and 115 of the Customs Ordinance if the Crown takes up the position that it exempt from the operation of such law.

2. It has been assumed for the purposes of this opinion that your references to the goods of the Services are references to the property of His Majesty or of the Crown (the terms are synonymous). Non-application of statute law to the Crown or to the property of the Crown does not mean that the officers of the Crown do not as a general rule observe the provisions of such law. The Crown is not bound by any statute that imposes a tax charge, &c., unless it is expressly so provided; but the officers of the Crown can pay such charges, as a matter of grace, where such charges are ultimately credited to the revenue of the Government of some British possession.

3. Any difference between the officers responsible for the administration of Ceylon law and the Naval, Military or Air Force authorities should be resolved by appropriate administrative action. The sale of goods belonging to His Majesty, for non-compliance with the Customs law of Ceylon, is illegal.

4. The above contains a brief summary of the effect of numerous cases which relate to this subject.

5. Your file is herewith returned.

(Sgd.) J. M. FONSEKA,  
Solicitor-General,  
for Attorney-General.

(Sgd.) R. R. CROSSETTE THAMBIAH,  
Crown Counsel.

Colombo, April 17/18, 1944.

Exhibits  
D 3  
Letter from the  
Solicitor-General  
to the Principal  
Collector of  
Customs  
18.4.44.  
—contd.

Exhibits

D 4

Letter from the  
Principal  
Collector  
of Customs to  
the Financial  
Secretary  
23.8.45.

D 4

**Letter from the Principal Collector of Customs to the  
Financial Secretary**

My No. A. 303

F. S.

In view of the instructions contained in your letter No. 1/3/99 (FSO) of 29.2.45, that goods of Services' ownership should not be sold under the Customs Ordinance, I arranged with the O. C., Port Clearance Transport, that he should act as liaison for clearing all "*prima facie*" service cargo and make every endeavour to ascertain the actual consignees of such goods. It now appears that in many cases the actual consignees cannot be traced and no document of title can be produced. The goods under reference have been lying in the premises for well over the period of three months permitted by section 108 of the Customs Ordinance. There is no doubt that some of the goods at least would be of very great value to the Services or the Civil Government. But in many instances substantial sums have been incurred as Warehouse rent which the Services are not prepared to pay. 10

2. In the circumstances, I shall be glad to have your authority to— 20

(1) deliver such goods to any branch of the Services which would find them of use, and

(2) Waive warehouse rent incurred (please see in this connection your letter No. 1/3/99 (FSO) of 28.4.44).

3. The purposes of this arrangement are, of course, first to clear the Customs warehouses of unclaimed cargo, and second to release for war purposes goods which, though not specifically identified, are clearly intended for one or other of the Services. Every care will be taken to restrict this method of disposal to goods which are undoubtedly Services cargo, and to exclude any lots which can be specifically identified and on which rent can accordingly be claimed against a particular unit. I propose further to report all such cases to the Commander-in-Chief's Office. 30

(Sgd.) H. S. M. HOARE,  
*Acting Principal Collector.*

Colombo, 23rd August, 1945.



**Letter from the Principal Collector of Customs to the  
Financial Secretary**

My No. A. 303

Your No. 1/3/99 (FSO)

Exhibits  
D 5  
Letter from the  
Principal  
Collector of  
Customs to the  
Financial  
Secretary  
10.9.45.

DISPOSAL OF UNCLAIMED SERVICE CARGO

S/F. S.

The proposal for the disposal of unclaimed cargo set out in my letter of 23rd August, will apply only to lots which are not identified and the correct rent on which cannot therefore be calculated.

2. Were such cargo sold in the ordinary course under Section 106 or 108 of the Customs Ordinance, the proceeds would seldom, if ever, be sufficient to cover the rent in addition to duties and other charges. I fear that any attempt to recover even hypothetical rent on such lots would deter the Services from removing them, especially under the present circumstances. Indeed, it has been common for units to enquire whether they would be liable to rent before showing any interest in unclaimed goods lying in the premises. As indicated in para. 3 of my letter of the 23rd August, rent will be claimed whenever *prima facie* liability can be established. In other cases, I feel that it would be vain to try to induce a Service unit which removes goods to oblige us, to pay rent which they themselves have not incurred. The only alternative to complete exemption would, I feel, be to sell such goods by public auction now that the war is over, regardless of the presumption or certainty that they were originally intended for Service use. As this would be a departure from the instructions contained in your letters of 29th February and 14th March, 1944, it would seem desirable, in the first instance, to obtain the Commander-in-Chief's approval.

(Sgd.) H. S. M. HOARE,

*Actg. P. C. C.*

10.9.45.

## D 6

Exhibits

D 6

Letter from the  
Principal  
Collector of  
Customs to the  
Flag Officer,  
Ceylon  
25.2.46.

**Letter from the Principal Collector of Customs to the Flag Officer,  
Ceylon**

No. A. 303  
H. M. Customs  
Colombo  
25th Feby., 1946.

*Copy to:*

1. Flag Officer, Ceylon.
2. Dy. Director of Movements & Transport. 10
3. O. C. 45 Embarkation Unit, R. A. F.

**UNCLAIMED CARGO—PRESUMED TO BELONG  
TO H. M. FORCES**

I annex a list of cargo lying in the Customs premises for a considerable length of time. This cargo is believed to belong to various branches of H. M. Forces, but it is not possible to identify the exact consignees. As this stuff should in normal cases have been disposed of under the Customs Ordinance, long ago, I shall be obliged if you would have any of it which may have been consigned to you claimed and cleared on production of documents without delay. 20

If there is any stuff consigned to you which you propose to abandon please inform me accordingly so that I may dispose of it under the Customs Ordinance. Please notify me of any items which you are unable to claim or have no interest in.

I shall be obliged if this matter is treated as urgent as this stuff is causing considerable congestion in the premises.

(Sgd.) R. M. DAVIES,  
*Principal Collector of Customs.*

D 6a  
List annexed  
to D 6  
14.1.46.

## D 6a

## List annexed to D 6

30

**Statement of Cargo Lying in Canal Yard over 3 Months**

City of Sydney ..	..	6.11.42	..	2,130 Pkgs. Iron
Nizam ..	..	23.10.45	..	1 bag colour dust
Haiyang ..	..	..	..	8 bdls. iron rods
Drava ..	..	..	..	1 Bag.—150 pcs.
Meadow Bank ..	..	13. 9.45	..	1 Crate and 2 bdls.
Sam Spolg ..	..	27. 8.45	..	50 S. Plates
Ismalia ..	..	17. 7.45	..	1 Crate

	Emp. Copperfield	.. 19. 7.45 ..	4 Bdls. iron
	City of Canberra ..	.. 14. 6.45 ..	1 Pipe, 26 plates
	Ettrick Bank ..	.. 18. 3.45 ..	1 Wheel
	Paraguay ..	.. 23. 3.45 ..	44 Pcs. Iron
	Ozarda ..	.. 2.12.44 ..	12 Pcs. Iron
	Malancha ..	.. 14.12.44 ..	362 S. plates
	Maihar ..	.. 1. 2.44 ..	25 Plates
	Malakand ..	.. 15.10.44 ..	7 Pcs. iron
	Mohanada ..	.. 18. 8.44 ..	6 Plates
10	San Antonio ..	.. 12. 3.44 ..	1 Bdl. tin plate
	Orna ..	.. 7. 8.44 ..	2 Coils wire
	Ozarda ..	.. 16. 5.44 ..	5 Angles
	Jalayamani ..	.. 15. 4.44 ..	5 Pcs. plates
	Aron Moor ..	.. 3. 2.44 ..	60 M. S. Flats
	Fooshing ..	.. 20. 1.44 ..	1 Coil wire
	Fort Ville Marie ..	.. 1.12.43 ..	2 S. Plates
	Fort Mc. Leod ..	.. 24. 9.43 ..	17 S. plates
	Gamaria ..	.. 28. 9.43 ..	2 Shackles
	Gongella ..	.. 26. 8.43 ..	5 Bdls. Wood
20	Bauff Park ..	.. 4.12.43 ..	22 Pcs. Flat iron
	Ft. Buckingham ..	.. 26.12.43 ..	80 Bdls. iron rods
	Trader ..	.. 26. 2.44 ..	30 Loose pipes
	City of Cheslis ..	.. 5.10.44 ..	14 Iron plates
	Jalajoti ..	.. 23. 8.45 ..	1 Drum and 1 Crate paint
	Samshire ..	.. 29.11.45 ..	73 Bdls. chains with shackles
	Jalaratna ..	.. 22.11.45 ..	2 Bdls. tin plates.

Exhibits  
 D 6a  
 List annexed  
 to D 6  
 14.1.46.  
 —contd.

(Sgd.) D. A. D. S. ABEYWARDENE.  
 January 14, 1946.

### D 7

### 30 Letter from the Principal Collector of Customs to the Financial Secretary

My No. 303  
 Your No. 1/3/99 (FSO)

S/F.S.

D 7  
 Letter from the  
 Principal  
 Collector  
 of Customs  
 to the  
 Financial  
 Secretary  
 6.3.46.

### DISPOSAL OF UNCLAIMED SERVICE CARGO

There is no improvement in the position. None of the Services has replied to the annexed letter which was addressed to them on 25/2/46.

2. The continued presence of these packages in the warehouses not only lessens storage essential for other cargo but also affects the sanitation of the warehouses where the officers have to work day and night.

3. In the circumstances, I invite reference to my letter of 10. 9. 45 and request that G. O. C's approval may be obtained to dispose of the articles under Section 106 or 108 of the Customs Ordinance.

(Sgd.) R. M. DAVIES,  
 Principal Collector.

Colombo, 6th March, 1946.

Exhibits

D 8

Letter from  
the Flag  
Officer, Ceylon,  
to the Chief  
Secretary  
13.5.46.

D 8

**Letter from the Flag Officer, Ceylon, to the Chief Secretary**

H. M. Naval Office,  
Colombo,  
13th May, 1946.

No. C. 2066/24

The Hon. The Chief Secretary.

**UNCLAIMED SERVICE CARGO**

Further to my letters No. C. 2066/24A dated 4th April and 29th April, 1946, all unclaimed cargo belonging to the Navy has now 10  
been removed from No. 15 Warehouse.

2. There are certain items of steel tubes and plates in the Canal Yard which are being removed by Superintending Naval Stores Officer, Ceylon, as opportunity offers. The steel tubes are in bad condition and lengths are being cut off by a welder and removed to the Army Salvage Depot. The steel plates which are being re-stacked at Kochchikade, are being removed as quickly as possible when the necessary cranes and transport are available. The steel tubes and plates do not, however, represent unclaimed cargo.

(Sgd.) \_\_\_\_\_, 20  
for Rear Admiral,  
Flag Officer, Ceylon.

D 9

Letter from the  
Principal  
Collector of  
Customs to the  
Flag Officer  
26.6.46.

D 9

**Letter from the Principal Collector of Customs to the Flag Officer**

Copies to:—

F. S. .... f. i—his case No. 1/3/99 (FSO)  
C. S. .... f. i—his case No. CF.D. 1342/44  
The Flag Officer (his case No. C. 2066/24/A)  
The Air Officer Commanding, R. A. F.—(his case No. AHQC/  
2151/32/EQ) 30  
Colonel i/c. Administration (his case No. CC. 4463/Q)

**DISPOSAL OF UNCLAIMED SERVICE CARGO**

The annexed statement contains the particulars of unclaimed cargo lying today in the Customs premises for a very long period. As it is presumed that these goods belong to the Services and appear

to have been abandoned by them, I propose to take action in the near future to dispose of them under the provisions of the Customs Ordinance. If any branch of the Services wish to claim any of the articles, I should be grateful if they would claim such articles within the next fortnight.

(Sgd.) R. M. DAVIES,  
Principal Collector of Customs.

No. A. 303  
H. M. Customs,  
10 Colombo, 26th June, 1946.

Exhibits  
D 9  
Letter from the  
Principal  
Collector of  
Customs to  
the Flag  
Officer  
26.6.46.  
—contd.

## D 9a

## List annexed to D 9

D 9a  
List annexed  
to D 9

UNCLAIMED CARGO LYING IN CANAL  
YARD, H. M. CUSTOMS

No. of Packages	Description	
1033	Iron bars	.. s. s. "Changon" of February 26, 1943.
3	Pipes	.. s. s. "Jasper Park" May 3, 1943
5	Bdls. wood	.. s. s. "Congella" of August 26, 1943
5	Bdls. wood	.. s. s. "Jalayamuna" of April 15, 1944
8	Bags fireclay	.. s. s. "Ozarda" of May 16, 1944
1	Bdl. tin plate	.. s. s. "San Antonio" of March 12, 1944
6	Steel plates	.. s. s. "Mahanada" of August 18, 1944
242	Steel plates	.. s. s. "Malancha" of December 14, 1944
25	Steel plates	.. s. s. "Maihar" of September 1, 1944
1	Wheel	.. s. s. "Ettrick Bank" of March 18, 1944
1	Pipe	.. s. s. "City of Canberra" of June 14, 1945
287	Earthenware pipes broken	.. s. s. "Nadir" of December 15, 1945
5	Coils wire	.. s. s. "Nadir" of December 15, 1945
159	Steel plates	.. s. s. "Macharda" of January 1, 1946
1	Bar T iron	.. s. s. "Adolp S oches" of January 20, 1946
1	Bdl. steel flats..	.. s. s. "Samaritan" of February 15, 1946
1	Bag colour dust	.. s. s. "Nizam" of ?
26	Pieces irons	.. s. s. "Haiyang" of ?
1	Piece log	.. s. s. "Drava"
14	Loose iron plates	.. s. s. "c/o Chester" of October 3, 1945
1	Crate	.. s. s. "Jalayjoti" of August 23, 1945

## D 14

## Minute made by Mr. C. L. H. Paulusz

D 14  
Minute made  
by Mr. C. L. H.  
Paulusz  
17.11.46.

40 L. W. No. 15

Re your minute on (91) any changes *today* in your list at (90/91)?

Intd. A. A.  
15.11.46.

Exhibits  
 D 14  
 Minute made  
 by Mr. C. L. H.  
 Paulusz  
 17.11.46.  
 —contd.

“ A ”

No change except that item 11/46—1 bag sugar has since been destroyed as unfit for human consumption.

Intd. S. M. A.  
 15. 11.

L. S.

Subtd.

Intd. A. A.  
 16. 11.

D. C.

10

Action at (82) has been long delayed. I see that L. W. No. 15 has started a minute to me (prob. because I wanted action expedited) and then cut it out. The file never reached me. All parties interested have now been notified. I suggest that we now inform C. S. thro' F. S. that we have received replies as at (84) (85) and (86) and that we are therefore advertising the goods for sale in the Gazette sending copies to the three branches of the services and ask for approval. This will never end if we do not dispose of the goods.

Please see also P. C. C's minutes on (83).

Intd. C. L. H. P. 20  
 17. 11. 46.

P. C. C.  
 Intd. R. M. G. M.  
 18. 11.

A.

For very early action pl.

Intd. C. L. H. P.  
 22. 11.

Accordingly.

Intd. R. M. D. 30  
 22. 11.

## D 10

**Letter from the Principal Collector of Customs to the  
Chief Secretary**

My No. A. 303  
Your No. CFD. 1342/44

Chief Secretary (thro' F. S.  
with reference to his case  
No. 1/3/99 (FSO) )

Exhibits  
D 10  
Letter from the  
Principal  
Collector of  
Customs to the  
Chief Secretary  
28.11.46.

**DISPOSAL OF UNCLAIMED SERVICES GOODS**

10 I forward a revised list of the unclaimed Services goods still remaining in the Customs premises. In reply to my inquiry dated 26.6.46 from the three branches of the Services whether they wished to claim any of these goods, R. A. S. C. and the Superintending Civil Engineer have replied in the negative. Presumably the goods have been abandoned. I therefore propose advertising the sale of these goods in the Government Gazette sending copies of the advertisement to the Services authorities. I shall be glad to have your approval of this proposal.

(Sgd.) R. M. DAVIES,  
Principal Collector.

20 H. M. Customs,  
Colombo, 28th November, 1946.

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**D 10a**

**List annexed to D 10**

D 10a  
List annexed  
to D 10

**UNCLAIMED CARGO LYING IN THE CANAL  
YARD, H. M. CUSTOMS**

	<i>No. of Packages</i>	<i>Description</i>	<i>Vessel</i>
	1033	.. Iron Bars ..	.. s. s. "Changon" of June 26, 1943
30	3	.. Pipes ..	.. s. s. "Jasper Park" of May 3, 1943
	5	.. Bundles wood ..	.. s. s. "Congella" of August 26, 1943
	5	.. Bundles wood ..	.. s. s. "Jalayamuna" of April 15, 1944
	8	.. Bags fireclay ..	.. s. s. "Ozarda" of May 16, 1944
	1	.. Bundle tin plates	.. s. s. "San Antonio" of March 12, 1944
	6	.. Steel plates ..	.. s. s. "Mahanada" of August 18, 1944
	242	.. Steel plates ..	.. s. s. "Malancha" of December 14, 1944
	25	.. Steel plates ..	.. s. s. "Maihar" of September 1, 1944
	1	.. Wheel ..	.. s. s. "Ettrick Banks" of March 18, 1944
	1	.. Pipe ..	.. s. s. "City of Canberra" of June 14, 1945
40	287	.. Earthenware pipes broken	.. s. s. "Nadir" of December 15, 1945
	159	.. Steel plates ..	.. s. s. "Macharda" of January 1, 1946
	1	.. Bar T iron ..	.. s. s. "Adolp S Ochs" of January 20, 1946

Exhibits	No. of Packages	Description	Vessel
D 10a	1 ..	Bundle steel plates	.. s. s. "Samaritan" of February 15, 1946
List annexed to D 10	1 ..	Bag colour dust	.. s. s. "Nizam" of ?
—contd.	26 ..	Pieces irons ..	.. s. s. "Haiyang" of ?
	1 ..	Piece log ..	.. s. s. "Drava"
	14 ..	Loose iron plates	.. s. s. "c/o Chester" of October 3, 1944
	1 ..	Crate ..	.. s. s. "Jalayjoti" of August 23, 1945

## D 11

D 11  
Letter from the  
Chief Secretary  
to the Principal  
Collector of  
Customs  
27.12.46.

**Letter from the Chief Secretary to the Principal Collector of Customs 10**

My No. CF.D. 1342-44  
Your No. A.303

## DISPOSAL OF UNCLAIMED SERVICE CARGO

P. C. C.

With reference to your letter of the 28th November, 1946, your proposal to advertise the sale of the unclaimed service cargo in the Government Gazette is approved.

Sgd. N. J. L. JANSZ,  
for Chief Secretary.

Colombo,  
24th/27th December, 1946.

Copy to:—S/F. S. Reference case No. 1/3/99 (FSO)

20

## P 2

P 2  
Receipt for  
Rs. 803 issued  
by the Customs  
Officer  
7.3.47.

## Receipt for Rs. 803 issued by the Customs Officer

## CUSTOMS RECEIPT

Name: A. D. Silva

1954

.....No. 13 of 4.3.47 at Canal Yard

No.	Description	..	..	..
514	6 Steel plates	..	..	40 0
517	1 Wheel	..	..	1 50
519	287 E W Pipe broken	..	..	9 0
520	159 Sheet plates	..	..	750 0
525	1 Piece log	..	..	50
528	5 Coil wire	..	..	2 0
				803 0

30

Duty Paid Rs. 803/-

(Sgd.) Illegibly--Customs Officer,  
7. 3. 47

(Sgd.) A. D. SILVA—Passenger



**Delivery Order issued by the Chief Preventive Officer**

Exhibits  
P 3  
Delivery Order  
issued by the  
Chief Preventive  
Officer  
7.3.47.

**L. W. CANAL YARD**

Please deliver the undermentioned goods sold by auction on  
4. 3. 47. The sale was approved by D. C. on 7. 3. 47.

<i>S. No.</i>		<i>Amount</i>	<i>Advance</i>	<i>Balance now paid</i>
514 ..	Six steel plates	50 0	10 0	40 0
517 ..	One wheel	1 50	—	1 50
519 ..	287 Earthenware pipes broken	12 0	3 0	9 0
10 520 ..	159 Steel plates	1,000 0	250 0	750 0
525 ..	1 Piece log	50	—	50
528 ..	Five coils wire	4 0	2 0	2 0
		<u>1,068 0</u>	<u>265 0</u>	<u>803 0</u>

7. 3. 47.

(Sgd.) Illegibly,  
for Chief Preventive Officer.

C. A. P. O.

In terms of my submission of even date may I have your instructions pl.

Intd. ———.

20

**D 12****Letter from the Chairman, British Stores Disposal Board (Ceylon), to the Principal Collector of Customs**

D 12  
Letter from the  
Chairman,  
British Stores  
Disposal  
Board (Ceylon)  
to the Principal  
Collector of  
Customs  
10.3.47.

**BRITISH STORES DISPOSAL BOARD (CEYLON)**

Office of the Director of  
Disposals Far Eastern  
Area, at Navy Office III,  
Galle Buck Road,  
Colombo, Ceylon.

10th March, 1947.

30 Ref. F. D. 1140  
Memorandum to:  
Principal Collector of Customs,  
Colombo.

Regarding a conversation this morning with your Representative, I would confirm that all the Steel Sheets now lying at Canal Yard are the property of the Ministry of Supply, having been declared "surplus" stores by the Navy.

Exhibits.  
 D 12  
 Letter from the  
 Chairman,  
 British Stores  
 Disposal  
 Board (Ceylon)  
 to the Principal  
 Collector of  
 Customs  
 10.3.47.  
 —contd.

These stores were sold in January, 1947, to a local commercial firm. For this reason it is requested that you cancel negotiations in which you have entered for sale by you.

We regret that the Navy failed to advise you of the state of affairs when you made endeavours to trace the ownership in June 1946.

Your courtesy in this matter is greatly appreciated.

(Sgd.) B. H. TWIGG,  
 Chairman,  
 British Stores Disposal Board (Ceylon).

P 4

10

P 4  
 Letter from  
 Plaintiff's  
 Proctor to the  
 Principal  
 Collector of  
 Customs  
 12.3.47.

**Letter from Plaintiff's Proctor to the Principal Collector of Customs**

12th March, 1947.

The Principal Collector of Customs,  
 Colombo.

Dear Sir,

**GOODS SOLD BY AUCTION TO MR. A. D. SILVA  
 ON 4. 3. 1947**

I have been requested by my client Mr. A. D. Silva, Contractor of Third Division, Maradana, to bring to your notice that the goods in the annexed list were put up for sale by auction by the Customs authorities on 4th March, 1947, and purchased by my client at the said sale for Rs. 1,068. 20

The payment was duly made and my client received a delivery order from the Chief Preventive Officer on 7th March, 1947, to take delivery of the goods but delivery has still not been made to my client though my client has called at the Customs House to take delivery.

The above goods were sold in terms of a notice appearing in the Ceylon Government Gazette on 21st February, 1947.

I am instructed to state that my client will suffer very considerable loss if he is not given delivery of these goods immediately. 30

I shall be glad if you will kindly issue orders for the handing over these goods to my client without any further delay.

Yours faithfully,

## The list referred to

					12. 3.47
	No.				
	514	.. Six steel plates ..	..	..	50 0
	517	.. One Wheel ..	..	..	1 50
	519	.. Two hundred and eighty seven earthenware pipes (broken)	..	..	12 0
10	520	.. 159 Steel plates ..	..	..	1,000 0
	525	.. 1 Piece log ..	..	..	50
	528	.. 5 Coils wire ..	..	..	4 0
				Total ..	<u>1,069 0</u>

Exhibits

P 4

Letter from  
Plaintiff's  
Proctor to the  
Principal  
Collector of  
Customs  
12.3.47.

## D 13

**Letter from Julius & Creasy to the Principal Collector of Customs**

**JULIUS & CREASY**

P. O. Box No. 154,  
Colombo,  
Ceylon.

22nd April, 1947.

D 13  
Letter from  
Julius & Creasy  
to the Principal  
Collector  
of Customs  
22.4.47.

Our Ref: HIG

20 The Principal Collector of Customs,  
H. M. Customs Office,  
Colombo.

Dear Sir,

## DISPOSAL OF SURPLUS STORES

We are acting on behalf of the British Stores Disposal Board, Ceylon, in a matter which has arisen through your sale of certain material under the Customs Ordinance.

Exhibits  
 D 13  
 Letter from  
 Julius & Creasy  
 to the Principal  
 Collector  
 of Customs  
 22.4.37.  
 —contd.

The position is that our clients sold a large quantity of material which is lying on Customs premises to a firm of the name of Maharajan & Co. during December last and in January of this year. You wrote to the Flag Officer, Ceylon, and to the Heads of the other two Services stating that you presumed that the goods in question belonged to the Services and that as they then appeared to you to be abandoned you proposed to dispose of same under the provisions of the Customs Ordinance. This letter was dated the 26th June, 1946, and you attached a schedule showing that the goods in question were unclaimed cargo lying in the Canal Yard in your Customs premises. Section 22 of the Customs Ordinance specifically exempts articles of every description which are imported for public use of His Majesty's forces from all Customs duties. Further, Section 108 of the same Ordinance under which the proposed sale was to have been made grants power of sale for the purpose of answering Customs dues. It is quite clear that the sale was ultra vires the provisions of the Customs Ordinance in view of the exemption in Section 22. Our clients also contend that prior to the sale by them to Messrs. Maharajan & Co. your department was made aware of the fact that the material in question was owned and was being disposed of by the Board, as a Surveyor of Messrs. Walker & Co. with members of the Board in the presence of officials of your department were admitted on to the premises for the purpose of surveying and marking the materials to be sold on the 26th February last. In addition to this the Deputy Collector of Customs himself signed an order addressed to one of his subordinates instructing him to permit our clients to remove a portion of this material from your Yard and his order was written on a form which clearly shows that the Board were the owners of this material. We understand that this instruction was signed on the 3rd ultimo and that on the following day your department purported to sell the same material by public auction notwithstanding the position as shewn above.

No doubt the action taken in selling this material was done in the mistaken belief that the materials had been abandoned, but we contend that your department had adequate notice and sufficient proof to the contrary. As a result we wish to inform you that any removal of these materials by you or by persons to whom you purport to have sold the materials by public auction will be adverse to our client's interests and will be likely to give rise to legal action on the part of Messrs. Maharajan & Co. Accordingly we wish to make it clear that we hold you responsible for any damage or injury which our clients may suffer as a direct result of such action on your part.

Yours faithfully,  
 (Sgd.) JULIUS & CREASY.

## D 1

## Declaration of Surplus Stores

Exhibits  
 D 1  
 Declaration  
 of Surplus  
 Stores  
 29.7.47.

To British Stores Disposals Board, Ceylon,  
 certified true copy of form D 1140 (as held by the Chairman, British  
 Stores Disposal Board (Ceylon)).

## DECLARATION OF SURPLUS STORES

Rendered by: D. N. S. O., Colombo

Date: 29. 7. 47.

10	Serial No.	<i>Item for Disposal</i>		Location	Condition	Origin
		<i>Nomenclature including Part or Vocab. No.</i>	<i>Quantity</i>			
		To adjust "D" Form 1140 dated 6th November 1946 as shown				
	1 ..	Steel plates, various shapes and sizes	11,000 Tons Approx.	Kochchikadde, Maradana and Canal Yard	S ..	3
20		<i>Should read</i>				
	2 ..	Steel plates, various shapes and sizes	6,141 Tons 6 cwt.	Kochchikade, Maradana and Canal Yard	S ..	3
		Abata ..	.. 4,858 Tons 14 cwt.			

Signature of Originating Officer: (Sgd.) L. A. WOON.