

1957

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

W. SOBITHA UNNANSE and another, Applicants, and  
A. PIYARATNA UNNANSE and another, Respondents

*S. C. 239—Application for Conditional Leave to Appeal to the  
Privy Council in S. C. 52 of 1955/D. C. Kandy, 2,154*

*Privy Council—Conditional leave to appeal—Notice to opposite party—Meaning of  
“opposite party”—Stay of execution of decree—Civil Procedure Code,  
s. 94 (2)—Appeals (Privy Council) Ordinance, Schedule, Rule 2.*

In an application for conditional leave to appeal to the Privy Council, the words “opposite party” in Rule 2 of the Rules in the Schedule to the Appeals (Privy Council) Ordinance mean the party on the side opposite to the applicant. Therefore, when the applicant is a defendant, he must give notice of his application to the plaintiff but need not give such notice to a co-defendant although he is at issue with the co-defendant.

Application for stay of execution of decree granted.

**A**PPPLICATION for conditional leave to appeal to the Privy Council.

*N. E. Weerasooria, Q.C., with W. D. Gunasekera, for 1st and 2nd  
Defendants-Applicants.*

*H. W. Jayewardene, Q.C., with B. S. C. Ratwatte, for Plaintiffs-  
Respondents.*

June 3, 1957. **BASNAYAKE, C.J.—**

This is an application for conditional leave to appeal to the Privy Council by the 1st and 2nd defendants. Objection is taken to the granting of leave to appeal on the ground that notice of the intended application has not been given to the 3rd, 4th and 5th defendants. Learned counsel for the plaintiffs, the party opposing the application, submits that the words “opposite party” in Rule 2 of the Rules in the Schedule to the Appeals (Privy Council) Ordinance mean not only party on the opposite side but also any party with whom the party applying for leave to appeal was at issue. The words “opposite party” in the Rules in the Schedule to the Appeals (Privy Council) Ordinance should be interpreted according to the well known canons of interpretation. First we should ascertain their ordinary meaning. Those words ordinarily mean the party on the side opposite to the applicant, and, in the instant case, as the applicants are the 1st and 2nd defendants, the opposite party are the plaintiffs.

We were referred to cases decided by the courts in England as to the interpretation of the words “opposite party” in rules and orders governing discovery and the service of interrogatories. It would be wrong to apply to our enactment the special meaning that expression has acquired in the context of Rule 1 of Order XXXI of the Rules of the

Supreme Court of England. Where the Legislature intends that those words should bear a special meaning it has said so expressly as in section 94 (2) of the Civil Procedure Code which defines "opposite party" for the purpose of our provisions governing discovery and interrogatories as a party between whom and the party interrogating an issue has been raised.

The objection is therefore over-ruled and conditional leave to appeal to the Privy Council is granted on the usual terms and conditions.

We have also before us two applications—one by the applicants to stay execution of the decree pending the appeal to the Privy Council and the other by the respondents for execution of the decree pending the appeal. We have heard counsel in support of the application for stay of execution of the decree and we do not see why stay of execution should not be granted on good and sufficient security to our satisfaction being furnished by the applicants. We have determined that a sum of Rs. 25,000 in cash deposited with the Registrar of this Court and secured in favour of the Crown will be sufficient security in the circumstances of this case for the due performance of such order as Her Majesty in Council shall think fit to make. The applicants have asked for time within which to furnish the security. We are disposed to allow that application and we direct that the security should be furnished on or before the 3rd September, 1957.

It is not necessary to deal with the application for execution of the judgment pending the appeal until it is known whether the applicants have furnished the security for stay of execution or not. We shall therefore deal with that application after 3rd September next. For that purpose we direct that the case be called on 4th September 1957.

PULLI, J.—I agree.

*Application allowed.*

---