

1913.

[FULL BENCH.]

*Present: Lascelles C.J. and Wood Renton and Pereira J.J.*DIAS *et al.* v. ARNOLIS *et al.*

409—C. R. Balapitiya, 8,604.

Appeal—Supremē Court has power to order.

Under section 770 of the Civil Procedure Code it is competent to the Supreme Court to order that any party to an action who has not been made a party to the appeal, but who is interested in the result of the appeal, be made a respondent to the appeal.

*Buultjens v. Uparis et al.*¹ commented upon.

THIS case was referred to a Full Bench, in view of the decision of *Buultjens v. Uparis et al.*,¹ for the consideration of the question whether the Supreme Court had the power, when the appeal was before it for argument, to order the third defendant to be made a respondent to the appeal.

F. de Zoysa, for the appellant.—This Court has the power under section 770 of the Civil Procedure Code to order that any person who was a party to the action in the lower Court, but who has not been made a party to the appeal, be made a respondent if the Court is satisfied that he is interested in the result of the appeal. *Buultjens v. Uparis et al.*,¹ if it is a decision in a contrary sense, is opposed to the very words of section 770 of the Civil Procedure Code.

E. W. Jayewardene, for the respondent, relied on *Buultjens v. Uparis et al.*¹

February 4, 1913. LASCELLES C.J.—

The only question which we have to decide here is whether the Judge before whom the appeal came had power under section 770 of the Civil Procedure Code to direct the third defendant to be made respondent to the appeal. There can, in my opinion, be no question but that this power is expressly and plainly conferred on the Judge by the above-named section. The only difficulty which has arisen in the case is in connection with the decision in the case of *Buultjens v. Uparis et al.*¹ Although in that case the Court did not exercise its powers under the section, there is, in my opinion, nothing in that judgment which can be construed to question the power of a Judge to direct a respondent to be added in terms of section 770 of the Civil Procedure Code. Whether or not a

¹ (1910) 2 *Cur. L. R.* 195.

respondent ought to be added in any particular case is a question for the decision of the Judge who hears the appeal. The proper course, in my opinion, is to remit the case to the Judge who heard the case, in order that he may exercise his discretion as to whether the third defendant should or should not be added as a respondent to the appeal. The costs of the reference ought to be costs in the cause.

WOOD RENTON J.—I agree.

PEREIRA J.—I agree.

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