1959 *Present :* **Sansoni, J., and Sinnetamby, J.**

ARUNASALAM DHANUSKODI, Petitioner, *and* COMMISSIONER FOR REGISTRATION OF INDIAN AND PAKISTANI RESIDENTS, Respondent

S. C. 392—In the matter of an Application under Rule 2 of the Rules in Schedule to the Appeals (Privy Council) Ordinance. S. C. No. 252 of 1956

Privy Council—Conditional leave to appeal—Grounds of appeal need not be specified in petition—Citizenship—Application under Indian and Pakistani Residents (Citizenship) Act. No. 3 of 1949—Right of appeal to Privy Council—Appeals (Privy Council) Ordinance (Cap. 85), Schedule, Rules 1 (a) (b), 2.

In an application for conditional leave to appeal to the Privy Council it is not necessary that the applicant should specify in his petition the particular ground which he is invoking in Rule 1 of the Schedule to the Appeals (Privy Council) Ordinance.

Citizenship, though a civil right, cannot be pecuniarily assessed. Accordingly, a judgment of the Supreme Court refusing an application for citizenship does not fall under Rule 1 (*a*) of the Schedule to the Appeals (Privy Council) Ordinance. Nor does an appeal lie therefrom under Rule 1 (*b*) unless a question of great general or public importance is involved.

APPLICATION for conditional leave to appeal to the Privy Council.

Walter Jayawardene, for the Petitioner.

A. C. Alles, Deputy Solicitor-General, with *R. S. Wanasundera*, Crown Counsel, for the respondent.

Cur. adv. vult.

April 7, 1959. SANSONI, J.—

This is an application for conditional leave to appeal to the Privy Council.

The applicant applied to be registered as a citizen of Ceylon. His application was dismissed, and on appeal this Court affirmed that decision.

The application was first made on the basis that an appeal lay as of right under Rule 1 (*a*) of the Rules in the Schedule to the Appeals (Privy Council) Ordinance, Cap. 85, as the appeal involved a civil right of the value of Rs. 5,000 or upwards. An amendment was subsequently made to the petition, by which it was claimed that the question involved in the appeal is one which, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council for decision; the appellant thereby invited this Court to exercise the discretionary power vested in it under Rule 1 (*b*) in his favour.

The Deputy Solicitor-General objected to the amendment being considered, on the ground that it was made after thirty days had elapsed since the date of the judgment. I think this objection is unsound, because there is no requirement in any Rule that the applicant for leave to appeal should specify the particular grounds mentioned in Rule 1 which he is invoking. The matter is concluded by the judgments in *de Silva v. Hirdaramani Ltd.* [1]. Though that case dealt with the contents of the notice to be given under Rule 2, the reasoning would apply to the application for leave made under that Rule.

Mr. Jayawardene has argued that the case falls within both Rule 1 (*a*) and Rule 1 (*b*). Now the difficulty I have with regard to bringing the case within Rule 1 (*a*) is that it is not clear that the civil right involved is of the value of Rs. 5000 or more. Rule 1 (*a*) contemplates, I think, cases in which it is possible to put a definite monetary value on the civil right in dispute. But citizenship, though a civil right, is one which cannot be pecuniarily assessed. The applicant will, in all probability, be financially affected to his detriment by the judgment given against him, but the loss he will thereby suffer is not the equivalent of the value of the civil right he is claiming.

As to the application of Rule 1 (*b*), we have been referred to the judgment of this Court in *Lucy Nona v. Bandara* [2] where an application for leave to appeal against a decree nisi for divorce was allowed under Rule 1 (*b*). It is urged that by analogy the application for leave to appeal should be allowed in this case. In that case Schneider J. referred to *D'Orliac v. D'Orliac* [3] where the Privy Council allowed leave to appeal in an action for divorce, but it must be noted that Lord Brougham observed that the Cour D' Appel of the Island of Mauritius was wrong in granting leave to appeal, because the Charter of Justice of Mauritius did not give a right of appeal in cases of divorce, and he also said that there should have been a special application to the Privy Council for leave to appeal. Subsequently, in *Shire v. Shire* [4] the Privy Council again granted leave to appeal in an action for restitution of conjugal rights following the case of *D'Orliac v. D'Orliac* (supra). Lord Brougham there said : " Every marriage involves the liabilities insisted on by the appellant ; the status of the issue of the marriage ; and that is a right which may be said to be beyond pecuniary value ". These cases were, of course, decided before any provision similar to Rule 1 (*b*) was enacted.

Even if we give full effect to the decision of this Court in *Lucy Nona v. Bandara* (*supra*), I do not see that it helps the applicant. It was held in that case that no special merit need be shown where the question concerns the validity of a marriage, but this is not a case where the validity of a marriage is in question. It seems to me that we would be going beyond the terms of Rule 1 (*b*) if we were to say that in every case where a civil right of an important nature is in dispute, leave may be granted under Rule 1 (*b*). The very terms of Rule 1 (*b*) would seem to be against such a

[1] *(1953) 55 N. L. R. 73.*
[2] *(1923) 5 Ceylon Law Recorder 17.*
[3] *(1844) 4 Moore P. C. 374.*
[4] *(1845) 5 Moore P. C. 81.*

contention, for the discretion of this Court is controlled and limited: it can be exercised in favour of an applicant only in certain specified cases. As Wood Renton C.J. said in *Pitchi Tamby v. Cassim Marikar*[1] " We are required by the terms of Rule 1 (*b*) itself, before granting special leave to appeal in any case, to be satisfied that the issue is one of great general or public importance. The words ' or otherwise ' in the rule must clearly receive an ejusdem generis interpretation ".

In two recent decisions of this Court regarding applications for citizenship—*Kodakam Pillai v. Mudanayake* [2] and *Tennekone v. Duraiswamy* [3] —applications of this nature were allowed only because the questions involved were such that, by reason of their great general or public importance, they ought to be submitted to Her Majesty in Council for decision. It is not suggested that any such question arises in this case, and Rule 1 (*b*) therefore does not avail the applicant.

I would therefore dismiss this application with costs.

SINNETAMBY, J.—I agree.

Application dismissed.