IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an appeal in terms of Section 11 of the High Court of the Provinces (Special Provinces) Act No. 19 of 1990 read with Article 154P (6) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA No. CA/PHC/0015/2021
S.P. Galle
HC WRT/No. 29/16

Nalani Danawathi Wijethilaka,
Keppitiyagoda Olinna Road,
Nagoda,
Galle.

PETITIONER

v.

1. Registrar and the Commissioner of the Corporative Development Department of the Southern Province,
   No. 147/3, Pettigalawatta Road, Galle.

2. Simarahitha Keppitiyagoda Kantha Naya Ganudenu Pilibada Samupakara Samithiya,
   Keppitiyagoda,
   Nagoda.

3. Hon. Attorney General,

Attorney General's Department,
Colombo.

RESPONDENTS

AND NOW BETWEEN

1. Nalani Danawathi Wijethilaka,
   Keppitiyagoda Olinna Road,
   Nagoda,
   Galle.

   PETITIONER-APPELLANT

v.

1. Registrar and the Commissioner of the Corporative Development Department of the Southern Province,
   No. 147/3, Pettigalawatta Road, Galle.

2. Simarahitha Keppitiyagoda Kantha Naya Ganudenu Pilibada Samupakara Samithiya,
   Keppitiyagoda,
   Nagoda.

3. Hon. Attorney General,
   Attorney General's Department,
   Colombo.

   RESPONDENT – RESPONDENTS

BEFORE	:	M. Sampath K. B. Wijeratne J. & M. Ahsan. R. Marikar J.
COUNSEL	:	S. N. Vijith Singh with Chithrananda Liyanage for the Petitioner - Appellant. Navodi de Zoysa, S.C. for the 1st and 3rd Respondent-Respondents.
ARGUED ON	:	26.08.2024
WRITTEN SUBMISSIONS	:	01.09.2022 (By the Appellant) The Respondent did not submit.
DECIDED ON	:	11.10.2024

M. Sampath K. B. Wijeratne J.

Introduction

The Petitioner-Appellant (hereinafter referred to as the 'Appellant') was an employee of the 2nd Respondent-Respondent, '*Seemasahitha Keppitiyagoda Kantha Naya Ganudenu Pilibada Samupakara Samithiya'* (hereinafter referred to as the '2nd Respondent'). The 1st Respondent-Respondent is the Registrar and Commissioner of the Co-operative Development Department of the Southern Province (hereinafter referred to as the '1st Respondent').

Factual background

A dispute arose between the Appellant and the 2nd Respondent concerning an alleged misappropriation of funds totaling Rs. 2,170,499.34, which the 1st Respondent referred to arbitration. Following an inquiry, the arbitrator issued an award under Section 59 of the Co-operative Societies Law No. 5 of 1972 (hereinafter referred to as 'the Co-operative Societies Law'), ordering the Appellant to pay the 2nd Respondent Rs. 10,66,38.44, along with Rs. 25,800.00

in litigation costs, amounting to a total of Rs. 1,32,438.34. Additionally, a 16% annual interest was imposed until the full amount is paid.

The Appellant, dissatisfied with the award, appealed to the 1st Respondent under Section 38(2) of the Co-operative Societies Law.

The 1st Respondent, acting under Rule 49(xii)(b) of the Co-operative Societies Rules, made pursuant to Section 61 of the Co-operative Societies Law and published in Extraordinary Gazette No. 93/5 dated 10th January 1974 (hereinafter referred to as 'the Rule'), rejected the appeal on the ground that the Appellant had failed to make the required appeal deposit as stipulated by Rule 49(xii)(a).

The aggrieved Appellant sought a Writ of *certiorari* to quash the letter dated 2nd December 2015, through which the 1st Respondent, the Registrar and Commissioner of the Co-operative Development Department of the Southern Province, dismissed the Appellant's appeal. Additionally, the Appellant sought a Writ of *mandamus* directing the 1st Respondent to acknowledge the appeal.

The learned High Court Judge of the Southern Province, holden at Galle, after considering the Appellant's Petition, the Respondents' objections, the submitted documents, and the parties' submissions, dismissed the Appellant's Writ application in the impugned order dated 29th January 2021.

The Appellant subsequently appealed to this Court against that decision.

In addition, the Appellant filed a Revision application as well, challenging the same order.

At the argument on 15th July, 2024, the learned Counsel for the Appellant indicated that he would accept this judgment in the connected revision application No. CPA 64/2021.

Analysis

For clarity, I will start with reproducing the relevant Rule.

Rule 49 (xii) (a) and (b) reads as follows;

'49 (i) to (xi) *(....)*

49 (xii) (a) *Every appeal to the Registrar from an award of an arbitrator or a panel of arbitrators shall be made within 30 days from the date of the award by a written statement setting out the grounds of appeal. Every such appeal shall be forwarded to the Registrar with an appeal deposit of Rs. 50 or 10% of the sum awarded where the appeal is made by the party against whom the award has been made and by Rs. 10% of the sum claimed in the dispute where the appeal is made by the party claiming any sum of money, whichever sum is the higher sum in either case.*

(b) an appeal not made in conformity with the above shall be rejected by the Registrar.

(xii)(c) – (xiii) *(...)*'

This appeal was filed by the party against whom the award was made. Therefore, according to the Rules, Rs. 50/- or 10% of the awarded sum, whichever is higher, must be deposited as security for the appeal. In this case, the awarded amount was Rs. 1,132,438.34/-, and 10% of that, Rs. 132,438.34/-, being the higher sum, should have been deposited. However, the Appellant admittedly deposited only Rs. 100/-, failing to comply with Rule 49(xii)(a)[1]. As a result, the 1st Respondent, the Registrar and Commissioner of the Co-operative Development Department of the Southern Province, dismissed the appeal under Rule 49(xii)(b) for non-compliance with Rule 49(xii)(a).

Vires of Rule 49 (xii)(a)

The learned Counsel for the Petitioner, relying on the Supreme Court judgment in *Sebestian Fernando v. Katana Multi-Purpose Co-operative Society Limited and others*[2] (hereinafter referred to as the '*Sebestian Fernando* judgment'), argued that the Supreme Court deemed Rule 49(xii)(a) to be *ultra vires*.

[1] *Vide* paragraph 10 of the Affidavit filed in support of the Petition filed in the High Court of Galle.
[2] [1990]1 Sri L.R. 342.

Therefore, the 1st Respondent's decision to dismiss the Appellant's appeal is legally invalid.

In response, the learned State Counsel for the 1st and 3rd Respondents contended that the observation in the *Sebastian Fernando* judgment, stating that Rule 49(xii)(a) is *ultra vires*, is not the *ratio decidendi* of the case, but rather *obiter dictum*. Therefore, no Court is obligated to follow the Supreme Court's observations regarding the *vires* of Rule 49(xii)(a). Further, it was argued that following the decision of *Sebestian Fernando*, in a series of judgements, this Court distinguished the *Sebestian Fernando* judgement and held otherwise.

Sebastian Fernando's case

The relevant facts of the *Sebestian Fernando*'s case concerning the instant appeal are as follows: the Appellant, who was also an employee of a co-operative society, was accused of a shortage. The dispute was referred to an arbitrator, who found the Appellant liable. When the Appellant lodged an appeal, he failed to make the required deposit under the Rule, leading to the rejection of the appeal. Three years later, the Appellant sought to invoke the Writ jurisdiction of the Court of Appeal, which dismissed the application without issuing notice to the Respondents, citing unexplained delay. Importantly, the Appellant did not challenge the *vires* of Rule 49(xii)(a) in the Court of Appeal, raising this issue for the first time in the appeal to the Supreme Court.

In the majority judgment of *Sebestian Fernando*, His Lordship Fernando J., with whom Bandaranayake J. concurred, made the following observations regarding Rule 49(xii)(a):

'*Thus, a serious question arises as to the vires of Rule 49 (XII)(a): that the requirement of an appeal deposit is not authorized by sections 58 (3), 61 (1) or 61(2) (y). However, as that question was not placed before the Court appeal for consideration, and as the Respondents were not heard in that Court (nor in this Court, though duly noticed) it is* ***only proper that it should be determined by***

***that Court**, after such amendment of the petition as that Court may permit in its discretion, and after hearing the Respondents.*' (Emphasis added)

In the judgment of Kulathunga J., similar observations were made, which state:

'*Thus far it seems possible to defend the impugned rule; but the most formidable challenge to it, namely the objection to the requirement that the appellant should deposit 10% of the sum awarded or claimed has to be met. There is no provision for relaxing this requirement; in default of such payment the Registrar is enjoined by Rule 49 (XII) (b) to reject the appeal. Having regard to the language of the Rule and the subject matter under consideration it does not seem possible to exempt an appellant from the liability to pay the required appeal deposit even by the application of the maxim "lex non cogit ad impossibilia". I therefore agree with my brother Fernando, J. that this rule may discourage and even prevent appeals made bona fide and upon good grounds solely because an appellant does not have the means of making the required appeal deposit.*

*For the above reasons, I am of the view that a serious question arises as to the vires of Rule 49 (XII) (a). this question was not raised in the appellant's application to the Court of Appeal but only in this Court; leave was allowed on that ground and the question was argued without the respondents being heard. As such, **it is only proper that a determination on that ground should be made by the Court of Appeal** after such amendment of the petition as that Court may permit in its discretion.*' (Emphasis added)

I acknowledge that the Supreme Court presented logical and well-founded reasons for its observation that Rule 49(xii)(a) is *ultra vires*. However, it is evident from the quoted excerpts that the Supreme Court did not arrive at a definitive conclusion regarding the *vires* of the Rule. Instead, the Court merely observed that there is a serious question concerning the *vires* of Rule 49(xii)(a).

The effective order made by the Supreme Court was to allow the appeal, set aside the Court of Appeal's order refusing to issue notice and dismissing the

application. It is crucial to note that the Supreme Court allowed the appeal not based on its observations regarding the *vires* of the Rule but rather on the grounds that the Court of Appeal should have issued notice to the Respondents. The Supreme Court directed the Court of Appeal to issue notice to the Respondents and to consider any amendments to the Petition. This indicates that the Supreme Court was deliberating an amendment to the Petition that would challenge the *vires* of Rule 49(xii)(a).

In the case of *W.D.M.L. Dissanayaka v. Co-operative Development Commissioner and Registrar and Four Others*[3] (C.A.), His Lordship Janak De Silva J. sitting in the Court of Appeal (as His Lordship then was) noted that when the *Sebestian Fernando's* case was referred back to the Court of Appeal, the State provided an undertaking to the Court that the Registrar of the Co-operative Development would entertain the Petition of appeal despite the insufficiency of fees. As a result of this undertaking, the Petitioner withdrew the application. Consequently, the Court of Appeal did not make any findings regarding the *vires* of Rule 49(xii)(a).

Ratio decidendi and obiter dictum

It is trite law that the *ratio decidendi* of a judgment from a Superior Court is binding on all inferior courts. This principle is known as the doctrine of *stare decisis*. His Lordship Thamodaran J. articulated this in the case of *Walkers Sons Co. (UK) Ltd. v. Gunatilake and Others*[4], where His Lordship observed:

'The ratio decidendi of cases decided by the Court becomes a rule for the future binding all courts which are not the courts of last resort whether it be under the same system or under a different system'.

Black's Law Dictionary provides the following definition for *ratio decidendi*:[5]

[3] (C.A.) PHC 12/2014.
[4] [1978-79-80] 1 Sri.L.R. 231 at p.252.
[5] B. A. Garner and H. C. Black, *Black's Law Dictionary*, Ninth Edition, 2009. at p.1376.

'The principle or rule of law on which a court's decision is founded'

Obiter dictum is defined as follows:[6]

'*[Latin "something said in passing"] A judicial comment made while delivering a judicial opinion, but one that is* ***unnecessary to the decision in the case*** *and therefore not precedential (although it may be considered persuasive). Often shortened to dictum or, less commonly, obiter* (emphasis added).'

In light of the aforementioned facts, it is clear that their Lordships of the Supreme Court did not make a definitive finding regarding the *vires* of Rule 49(xii)(a) and left that determination to the Court of Appeal. Therefore, the statements concerning the *vires* of the Rule are clearly *obiter dictum* and are not binding on inferior Courts. Nevertheless, I acknowledge that these observations are persuasive.

Somaratne's case

Weerakkody Pathirennehelage Somaratne of Gogodagama v. Commissioner of Co-operative Societies and Four Others (hereinafter referred to as '*Somaratne's* case')[7] is a case in which Rule 49(xii) was subjected to scrutiny by the Supreme Court. The relevant facts of the case are as follows: The Appellant submitted an appeal to the 5th Respondent against an award within the prescribed thirty-day period, which should have been forwarded to the 1st Respondent. However, the Appellant did not make the required appeal deposit as stipulated by the Rule. Although the 5th Respondent was not obligated to do so, he forwarded the appeal to the 1st Respondent, but this was done after the thirty-day period. Consequently, the 1st Respondent rejected the appeal on two grounds: that it was out of time and that the appeal deposit had not been made.

In *Somaratne's case*, the Supreme Court analyzed Rule 49(xii)(a) alongside relevant Sections 58(3) and 61(2)(y) of the Co-operative Societies Law. Unlike

[6] *Ibid* at p. at p.1177.
[7] S.C. case No. SC appeal 58/80.

in *Sebestian Fernando's case*, the Court arrived at a definite and unequivocal finding that the Rule is *intra vires.* The following observations made by His Lordship Ismail J. (with whom Justices Wanasundera J. and Ratwatte J. concurred) unequivocally confirm this position:

'*Counsel appearing for the petitioner contended that Rule 49 (xii) (a) cannot circumscribe the right of appeal that had been granted to the petitioner in section 58 (3) of Co-operative Societies Law No. 5 of 1972. This Section reads,*

> *"Any party aggrieved by the award of the arbitrator or arbitrators may appeal therefrom to the Registrar with in such period and in such manner as may be prescribed by rules."*

This sub-section must necessarily be read with the rule making powers granted to the appropriate Minister under Section 61, which I have already referred to. Under sub-section 61 (2)(y) the Minister is unpowered to frame rules to prescribe the forms to be used, the fees to be paid, the procedure to be observed, and all other matters connected with or incidental to the presentation, hearing and disposal of appeals under this Law or the rules made thereunder. It is clear therefore the Minister empowered to make rules prescribing the time limit of 30 days from the date of the award within period an appeal had to be filed with the registrar and also to fix the appeal deposit which under rule 49 (xii) (a) had been fixed at Rs. 50/- or 10% of the sum awarded against the petitioner whichever sum was higher.

I am therefore of the view that Rule 49 (xii) (a) is the rule that had been framed under Section 61(2)(y) by the Minister and does not circumscribe the right of appeal granted under section 58(3) of the Law as the rule making powers of the Minister entitles the Minister in terms of the Law to prescribe forms, fees to be paid and procedure to be observed.'

Nevertheless, in *Sebestian Fernando's case*, both their Lordships Fernando J.[8] and Kulatunga J.[9] observed that the finding in *Somaratne's case* regarding the requirement of an appeal deposit being *intra vires* **appears to be** *obiter*.

The word 'appear' connotes the meaning something become visible or noticeable, especially, without apparent cause. This clearly does not convey a strong degree of certainty in the mind of a judge. Chinua Asuzu, in his work titled *Judicial Writing: A Benchmark for the Bench*[10], states that a conclusion in a judgement should state the disposition with maximum clarity and maximum freedom from ambiguity. Therefore, it is my humble opinion that Their Lordships did not reach a definitive finding on this matter.

In light of the analysis provided above, the resulting position is that in *Somaratne's case*, three judges of the Supreme Court held that Rule 49(xii) is *intra vires*, which constitutes the *ratio decidendi* of the judgment. In contrast, in *Sebestian Fernando's* case, both judgments expressed that the Rule is *ultra vires*; however, these statements were *obiter dicta*.

This is an appeal from the judgment of the High Court of Galle, where the Appellant challenged the decision of the Commissioner of the Co-operative Development Department of the Southern Province in a Writ application. The learned High Court Judge refused to issue the Writs.

As observed by His Lordship Janak De Silva J. sitting in the Court of Appeal (as His Lordship then was), in *Weegaswatta Dissanayaka Mudiyanselage Lokubanda Dissanayaka v. Co-operative Development and Three Others* (C.A.)[11], the *vires* of a rule made by a Minister cannot be challenged in a Provincial High Court. His Lordship concluded:

[8] At page 346.
[9] At page 356.
[10] Partidge publishing, at p.199.
[11] C.A. case No. CA/PHC/12/2014, decided on 05.10.2018.

'*Rule 49 (xii)(a) was made under the Co-operative Societies Law No. 5 of 1972 by the relevant Minister of the central government. He was exercising a power given under a law in the whole country and not only within the Central Province. Hence it could not have been the subject matter of a direct attack as to its vires in the Provincial High Court of the Central Province by way of judicial review.* ***There is a general rule in the construction of Statutes that what a Court or person is prohibited from doing directly, it may not do indirectly or in a circuitous manner.*** *[Bandaranaike v. Weeraratne and others (1981) 1 Sri L.R. 10 at page 16]. Therefore, I am of the view that the vires of Rule 49 (xii) (a) is not open for collateral attack in proceedings before the Provincial High Court. This finding is sufficient to reject the argument made by the learned counsel for the Appellant on the vires of Rule 49 (xii) (a)'.*

This finding is sufficient to reject the argument made by the learned counsel for the Appellant regarding the vires of Rule 49(xii)(a).

The learned Counsel for the Appellant cited the judgment in *W.S. Siripala v. The Elpitiya Multi-Purpose Co-operative Society Ltd. and Three Others* (C.A.)[12], (hereinafter referred to as the *Siripala* case) where His Lordship Hector Yapa J. (with whom Upali de Z. Gunawardana J. concurred) set aside the orders of the learned High Court Judge and the Commissioner of Co-operative Development and the Registrar of Co-operative Societies, Galle, by considering the *vires* of Rule 49(xii). This case, similar to the one at hand, involved an Appellant who failed to make the required deposit in accordance with Rule 49(xii), resulting in the rejection of the Appeal by the Commissioner/Registrar under Rule 49(xii)(b).

I observe that, in the *Siripala* case, the Court did not analyze the *vires* of Rule 49(xii) independently but instead relied entirely on the observations made by the Supreme Court in *Sebestian Fernando's* case. The final conclusion of the Court, which states, '*in view of the submission of the learned Counsel* ***based on the decision of the Supreme Court referred to above****, we allow the appeal and set*

[12] C.A. appeal No. 8/94 (PHC).

aside the order of the High Court dated 07.07.93 and the order of the 4th respondent dated 19.06.92. We further direct the 4th respondent to entertain the appeal against the order of the 2nd respondent dated 04.04.92 and come to a decision very early', supports the position mentioned earlier. (Emphasis added)

As I have already stated above, the statement made in the *Sebestian Fernando* judgment regarding the *vires* of Rule 49(xii)(a) is clearly *obiter dictum*. Consequently, the aforementioned judgment of this Court would not serve as judicial precedent for the case at hand.

Be that as it may, the learned State Counsel for the Respondent cited a series of cases from this Court where the statement made in the *Sebestian Fernando* judgment regarding the *vires* of Rule 49(xii)(a) was not followed.

In the case of *K. H. Nanadani v. Matara District Co-operative Society Ltd & three others* (C.A.)[13], His Lordship L.T.B. Dehideniya J. sitting in the Court of Appeal (as His Lordship then was) held that, although in the *Sebestian Fernando* case their Lordships discussed the *vires* of Rule 49(xii) and noted that a serious question had arisen, this issue was referred to the Court of Appeal for determination, and the Supreme Court did not hold that Rule 49(xii) is *ultra vires*.

In the case of *Duminda Lakunusara Bandara Udugama v. Commissioner of Co-operative Development and Registrar of Co-operative Societies and two others* (C.A.)[14], His Lordship A.L. Shiran Gooneratne J. sitting in the Court of Appeal (as His Lordship then was) held that compliance with the requirement of depositing the amount stipulated in Rule 49(xii)(a) is a mandatory prerequisite for pursuing an appeal. Consequently, if the Appellant fails to make the required deposit, the appeal must be rejected.

[13] C.A. case No. CA/PHC/146/2004, decided in October 2016.
[14] C.A. case No. CA/PHC/200/2014, decided on 27.06.2019.

In the case of *Dharmarathna Wasam Palliyage Sampath Manjula Nanayakkara v. Commissioner of Co-operative Development & Registrar of Co-operative Societies (Central Province)* (C.A.)[15], Her Ladyship P.R. Walgama, J., after considering the arguments raised by the Appellant regarding the *vires* of Rule 49(xii)(a), held that Section 61(1) of the Co-operative Societies Law No. 5 of 1972 empowers the Minister to make rules, and Section 61(2)(y) specifically provides for the formulation of Rules regarding the forms, fees, procedure, and other matters connected with the presentation, hearing, and disposal of appeals. Her Ladyship concluded that the observations made in the *Sebestian Fernando* case concerning Rule 49(xii)(a) cannot be regarded as the *ratio decidendi* of that case[16]. Instead, she chose to follow the decision in *Somaratne's* case, where it was held that the Rule is *intra vires.*

Her Ladyship P.R. Walgama J. reached a similar conclusion in the subsequent case of *A.D. Samarasinghe Abeyawardene v. Co-operative Commissioner of Southern Province and another*[17] regarding the *vires* of Rule 49(xii)(a). In this case, the Appellant argued that since Rule 49(xii)(a) specifies two potential amounts for the appeal deposit, Rs. 50 or 10% of the sum awarded, the Appellant should be entitled to deposit either of the two amounts. However, the Court rejected this argument, reasoning that the Rule explicitly states that the deposit must be the higher of the two sums. This interpretation emphasizes the mandatory nature of the requirement, reinforcing the position that the Appellant must comply with the stipulation as outlined in the Rule.

In my opinion, when the law stipulates a pre-condition for filing an appeal, that condition must be satisfied before the Appeal is submitted for it to be considered valid in law.

The facts of the case, as outlined in the judgment, reveal that the learned High Court Judge in the Writ application had granted the Appellant an opportunity to

[15] C.A. case No. CA./PHC/24/09, decided on 10.06.2016.
[16] *Supra* note 2.
[17] C.A. case No. CA/PHC/20/2004, decided on 13.09.2016.

deposit the remaining balance required under the Rule as the appeal deposit. However, the Court of Appeal rejected the Appellant's entitlement on the basis that the Supreme Court's decision in the *Sebastian Fernando*'s case, which allowed time for the Appellant to pay the remaining 10% deposit, was merely *obiter dicta*[18].

Relying on this, the learned Counsel for the Appellant contended that the Appellant in the present case should similarly have been given a chance to make the deposit.

However, I am unable to find any such statement in the *Sebastian Fernando* judgment. As a result, it is clear that there is no judicial precedent supporting the granting an opportunity to remedy the deposit deficiency. Accordingly, I hold that no judicial precedents exist to permit the Appellant to rectify the defects in the appeal deposit, and doing so would also contravene the Rules.

Principle of *stare decisis*

In light of the above analysis, I conclude that, despite the Court of Appeal repeatedly asserting that the *obiter dicta* in *Sebestian Fernando's* case, which states that Rule 49 (xii)(a) is *ultra vires*, and the Supreme Court's determination in *Somaratne's* case that the Rule is *intra vires*, the same question continues to be reagitated in appeals, as seen in this case. Specifically, His Lordship Janak de Silva J. has thoroughly analyzed both judgments, preferring to follow the latter, which affirms that Rule 49 (xii)(a) is *intra vires.*

In this context, I am of the view that rearguing the same issue before this Court in appeals, without pursuing appropriate legal avenues to challenge the Rule, is an unproductive practice that wastes the Court's energy and resources. Such conduct should be discouraged.

[18] Pages 6 and 7 of the Judgement.

In the case of *Walker Sons & Co. (U.K.) Ltd. v. Gunathilake and Others*[19], Thamotheram J. observed, after considering the judgment of Basnakyake C.J. in *Bandahamy v. Senanayake*[20], that as a rule, two judges sitting together could follow a previous decision of two judges but where two judges sitting together are unable to agree with a decision of a similar bench, the practice is to reserve the case for the decision of a fuller bench.

Conclusion

In light of the above analysis, I find that the learned High Court Judge, in his Order dated 29th January 2021, has appropriately examined the relevant facts, statutory provisions, and judicial precedents. He has arrived at a just conclusion in dismissing the application for the prerogative Writs sought by the Appellant.

Therefore, I dismiss this appeal, subject to a cost of Rs. 25,000/-.

JUDGE OF THE COURT OF APPEAL

M. Ahsan. R. Marikar J.

I Agree.

JUDGE OF THE COURT OF APPEAL

[19] *Supra* note 4.
[20] 62 N.L.R. 313.