1930

Present : **Fisher C.J. and Drieberg J.**

SOERTSZ v. COLOMBO MUNICIPAL COUNCIL.

256—*D. C. Colombo*, 1,654.

Appeal—Case stated under the Housing and Town Improvement Ordinance—Judgment of Supreme Court—Right of appeal to Privy Council—Privy Councils Ordinance, 1909, *s.* 4.

There is no right of appeal to the Privy Council from a judgment of the Supreme Court on a case stated under section 92 of the Housing and Town Improvement Ordinance, No. 19 of 1915.

APPLICATION for conditional leave to appeal to the Privy Council.

Keuneman, for appellant.

Zoysa, K.C. (with *Speldewinde*), for respondent.

March 31, 1930. FISHER C.J.—

In my opinion we have no jurisdiction to grant leave to appeal to the Privy Council in this case.

The Housing and Town Improvement Ordinance, No. 19 of 1915, under section 92 of which we had authority to hear and decide the matter in question, is silent with regard to applications for leave to appeal from decisions under that section, and in my opinion it imposes finality on such decisions. It was argued, however, that this application comes within the provisions of the Appeals (Privy Council) Ordinance, 1909, section 4 of which provides that the procedure thereinafter referred to shall regulate "the right of parties to civil suits or actions in the Supreme Court to appeal to His Majesty in Council against the judgments and orders of such Court . . . .", and two questions were raised on the words quoted. Firstly is the applicant for leave to appeal a party, and, secondly, is the decision sought to be appealed against a judgment or order of this Court in a civil suit or action ?

As to the first question, no objection was raised on this ground when the matter was before us for argument, and I do not think it is necessary to deal with it beyond saying that the point raised by the respondent to this application seems to be well founded.

As regards the second question, the right of appeal referred to was created by section 52 of the Charter of 1833, by section 5 of which "the Supreme Court of the Island of Ceylon" was established. Section 52 provides that "it shall be lawful for any person or persons being a party or parties to any civil suit or action depending in the Supreme Court to appeal, &c., ..." The Supreme Court was continued by section 7 of the Courts Ordinance, 1889. The District Courts were established by section 55 of that Ordinance and their civil jurisdiction was defined in section 65. The appellate jurisdiction of the Supreme Court is defined by section 21 (2) and the powers of the Court on appeal are defined in section 40, and, so far as appeals from District Courts to the Supreme Court are concerned, those provisions relate solely to the excercise by District Courts of the jurisdiction conferred upon them by the Courts Ordinance, 1889.

In dealing with the matter under consideration the Supreme Court was not acting in exercise of the appellate jurisdiction vested in it by the Courts Ordinance, 1889, nor was the District Court acting in exercise of any jurisdiction

vested in it by that Ordinance. The District Court was not in fact acting as a Court of law at all but was performing a function vested in it because the alternative tribunal under section 83 of Ordinance No. 19 of 1915 has not been brought into existence, and in the performance of that function it is a final tribunal except when a question of law is involved and the provisions of section 92 are put into operation.

In my opinion, therefore, our decision on the point of law submitted to us was not a judgment or order in " a civil suit or action ".

It is unnecessary to deal with the question of whether this is a matter of " great, general, or public importance " within the meaning of rule 1 (*b*) of schedule I. of Ordinance No. 31 of 1909, which would move us to exercise our discretion in favour of the applicant.

For the reasons I have given above, I think the application must be dismissed with costs.

DRIEBERG J.—I agree.

Application refused.