1941 *Present :* **Howard C.J. and Hearne J.**

PALANIAPPA CHETTY *et al. v.* MERCANTILE BANK *et al.*

In revision D. C., Colombo, 49,541.

Abatement of appeal—Application for typewritten copies—Failure to comply with rules—Order of abatement—Ministerial act—No appeal—Supreme Court's powers of revision.

The power vested in the District Court under the Civil Appellate Rules to declare that an appeal has abated is exercised in a ministerial and not a judicial capacity and no appeal lies from such an order.

In such a case the Supreme Court is free to exercise its revisionary powers.

THIS was an application to revise an order made by the District Judge of Colombo.

H. V. Perera, K.C. (with him *S. Nadesan* and *Walter Jayawardene*), for plaintiffs-petitioners.

N. E. Weerasooria, K.C. (with him *N. Nadarajah*), for 6th to 16th defendants-respondents.

Cur. adv. vult.

December 11, 1941. HOWARD C.J.—

Mr. Weerasooria on behalf of the respondents has taken a preliminary objection to the hearing of this application by the Court on the ground that the order of the District Court of which complaint is made is an appealable one and therefore the Supreme Court cannot be asked to use its revisionary powers. The principle with regard to the employment of those powers has been considered in numerous cases and the principle has been established that the proceedings in revision is an extraordinary remedy which the Courts will not generally employ to deal with decisions which could be brought before it by way of appeal. It is not, however, necessary to consider whether the discretionary power of the Court to have recourse to its powers of revision should be employed if the order of the District Court was not appealable. The order made by the Court

arose out of an application made on September 12, 1941, by the petitioners under rule 2 of the Civil Appellate Rules, 1938, for type-written copies of the record. On November 27, 1941, the respondents applied to the District Court by motion for an order declaring that the appeal had abated for the reason that the form of the application for type-written copies made by the petitioners was not in conformity with rule 2 (1) of the Rules referred to. The District Judge on November 28, 1941, made the order allowing this application. The powers vested in a District Judge or a Commissioner of Requests under the Civil Appellate Rules, 1938, do allow of the exercise of any discretion. They are ministerial and not judicial. The order of which complaint is now made purports to be made in the exercise of some judicial discretion, but such a judicial discretion is not vested in the Court by any provision of the law. If the District Judge was purporting to make the declaration under section 4 (*a*) of the Rules, this provision cannot, in view of the words " the appeal shall be deemed to have abated ", that occurs therein, be said to permit the exercise of any discretion. Sections 19 and 36 of the Courts Ordinance (Chapter 6) formulate the Appellate Jurisdiction of the Supreme Court. Read in conjunction with the definition of " Court " in section 2, this jurisdiction extends to the hearing of appeals from District Courts acting judicially. No appeal is provided when a Judge is acting in a ministerial or administrative capacity. In such matters, however, the Court is empowered to act by virtue of its revisionary powers.

In these circumstances I am of opinion that the preliminary objection must be overruled and this application will be listed for hearing together with the appeal.

HEARNE J.—I agree.

Preliminary objection overruled.