1933 *Present :* **Dalton A.C.J. and Koch A.J.**

SEEMAN PILLAI *v.* SADANATHAKURUKAL.

197—D. C. Jaffna, 16,400.

Privy Council—Application for conditional leave—Order refusing intervention in partition action—Final judgment—Ordinance No. 31 of 1909, rule 1 (a) and s. 4.

An order refusing intervention in a partition action is a final judgment within the meaning of rule 1 (*a*) of the Privy Council (Appeals) Ordinance.

An intervenient in a partition action is a party to a civil suit or action within the meaning of section 4 of the Ordinance.

APPLICATION for conditional leave to appeal to the Privy Council.

H. V. Perera (with him *Kandiah*), in support.

N. E. Weerasooria (with him *Subbramaniam*), for seventh, eighth, and ninth added defendants, respondents.

June 26, 1933. DALTON A.C.J.—

This is an application by the substituted intervenient in a partition action, whose intervention has been refused, for conditional leave to appeal. It is not denied that the matter in dispute, a 5/6th share in the land to be partitioned, is of the value of upwards of Rs. 5,000. It is urged however against the application, first that the order appealed from is not a final judgment of this Court within the meaning of rule 1 (*a*) of the Schedule to Ordinance No. 31 of 1909, and secondly that proceedings under the Partition Ordinance are not "civil suits or actions" and an intervenient is not a party to a civil suit or action within the meaning of section 4 of the Ordinance.

Mr. Weerasooria, for the eighth and ninth added defendants-respondents, concedes as regards the second point that appals have been taken to the Privy Council against judgments arising out of proceedings in partition, proceedings also that precede the issue of an interlocutory decree. A very recent case of this kind is *Weerasekera v. Peiris* [1], and there are others. In *Hussan v. Peiris* [2] it was held that a partition action is a proceeding coming within the meaning of the word 'action' as given in section 3 of the Courts' Ordinance, 1889, and in section 5 of the Civil Procedure Code. I have no doubt that it comes within the term 'action' as used in section 4 of Ordinance No. 31 of 1909. Apart from other reasons for this conclusion, it would be highly inconvenient, as pointed out by Bertram C.J. in *Subramanian Chetty v. Soysa* [3], if the word 'action' in this Ordinance were given a different meaning from that which is given to it in the Code. I am satisfied also that an intervenient is a party to a civil suit or action within the meaning of section 4 of the Ordinance.

On the first point, it is not denied that the judgment appealed from finally decided the rights of the appellant in respect of his claim to an interest in the property to be partitioned. It is true an interlocutory decree in the partition proceedings may follow upon the judgment, but

[1] *2 C. L. W. 99.*

[2] *34 N. L. R. 238.*

[3] *25 N. L. R. at p. 348.*

it is nevertheless a judgment which has finally decided the rights of the parties on the principal question at issue between them. That is the test that has to be applied in considering this question as laid down by this Court in *Ralahamy v. Dinohamy*[1] and other cases.

In the notes to Order 58, r. 3, on the subject of appeals (Annual Practice) will be found several English decisions on the question of what is a final or interlocutory judgment or order. For the purpose of this case, all that it is necessary to call attention to is that the effect of the decisions is that all orders which decide the rights of the parties, though made on applications interlocutory in form, are to be treated as final within that rule.

The order appealed from is, in my opinion, a final judgment of the Court in which the matter in dispute on the appeal amounts to or is of the value of Rs. 5,000, and the petitioner is therefore entitled as of right to leave to appeal. Conditional leave will therefore be granted, on the usual terms. Petitioner is entitled to the costs of this application.

KOCH A.J.—I agree.

Application allowed.