1912.

Present: Lascelles C.J. and Wood Renton J.

COSTA *et al v.* SILVA *et al.*

28—D. C. Colombo, 960.

Appeal—Interlocutory order—Objections to account filed by executors—One issue decided against executors—No amount ordered to be brought into Court.

Objection was taken to the account filed by the executors on several grounds. On the day fixed for inquiry it was agreed that one of the issues should be tried on that day, viz., the issue "Whether the executors had sold any of the properties belonging to the estate for less than their real values; if so, which of them?" The District Judge answered the question raised in the affirmative, but did not specify the exact sum which he considered to be the true value of the properties sold, and did not make any order directing the executor to bring any particular amount into Court.

Held, that this was not an appealable order.

THE facts appear in the judgment.

Walter Pereira, K. C., S. G. (with him *Samarawickrema*), for the respondents.—There is no appealable order in this case. Only one issue in the case has been decided, but no formal order has been drawn up. The judgment does not even say what sum the executors have to bring into Court. Every decision of a Judge is not appealable.

H. J. C. Pereira (with him *Jayatileke*), for the appellants.—The District Judge has decided one issue in the case. It was agreed between the parties that the issues should be decided one by one. If no appeal was taken against the judgment on the present issue, the appellants would be barred. See *Punchi Appuhamy v. Mudianse*.[1] [Wood Renton J.—There is nothing to prevent your appealing in the end, on all maters.]

This is a formal order of the District Judge, and is therefore appealable (*Pieris v. Perera*[2]).

If no writ issues now, appellant is not anxious to have the appeal heard now.

May 27, 1912. LASCELLES C.J.—

I have no doubt that the appeal in this case is premature. This is a petition for a judicial settlement, in which objection is taken to the account filed by the executors on nine grounds. When the petition came on for trial on May 29, 1911, it was agreed that one of the issues should be tried on that day, namely, the issue " Whether the executors had sold any of the properties belonging to the estate for less than their real values; if so, which of them?"

A good deal of evidence was heard, and the Judge declared his decision on January 11, 1912. He there states that one of the executors' own witnesses had valued certain property sold by the executors at Rs. 8,801, which property the executors had sold for Rs. 5,500, and the learned District Judge expressed the opinion that the properties sold were worth at least double the amount for which they had been sold; and in the result the Judge answered the question raised in the issue in the affirmative. He did not specify the exact sum which he considered to be the true value of the property, and he did not make any order directing the executors to bring any particular amount into Court. It seems clear to me that this is not an appealable order. It amounts to no more than an expression of opinion on one of several issues, which, for the sake of convenience, was heard separately from the others. The inconvenience of allowing an appeal to be taken against every item of a contested account is obvious. If such a proceeding were allowed, an inquiry into the accounts of an executor might be rendered impracticable. After the Judge has made his decree on the petition for a judicial settlement, the appellant will have an opportunity, if he is so advised, of appealing against any of the findings to which he objects. In my opinion the appeal is premature, and must be dismissed with costs.

WOOD RENTON J.—

I am of the same opinion, for the same reasons.

Appeal dismissed.

[1] *(1907) 2 A. C. R. 159.*

[2] *(1906) 10 N. L. R. 41.*