1934 *Present:* **Dalton and Drieberg JJ.**

THEVAGNANASEKARAM *v.* KUPPAMMAL *et. al.*

3-5—D. C. (Inty.) Colombo, 5653

Privy Council—Application for letters of administration by widow to estate of deceased husband, worth less than five thousand rupees—Main question to be decided being validity of marriage and legitimacy of children—Children's interest worth over five thousand rupees—Death of widow—Substitution of executor—Right of executor for conditional leave to appeal—Appeals (Privy Council) Ordinance, 1909, Schedule 1, rule 1 (a).

S presented a petition for letters of administration to the estate of her deceased husband M, whose estate was admittedly below five thousand rupees in value. On her death her executor, the present appellant, was substituted and the proceedings continued, the principal question to be determined being whether S and M were married. The object was to obtain an adjudication on the validity of the marriage and the legitimacy of the children in order to secure their reversion to *fidei commissum* property which was admittedly over Rs. 5,000 in value. The finding of the original Court was against the claim of the petitioner and, on appeal, the finding was affirmed by the Supreme Court.

Held, (on an application for conditional leave to appeal to the Privy Council) that the appellant was not entitled to have leave to appeal.

THIS was an application for conditional leave to appeal to the Privy Council.

N. E. Weerasooria (with him *N. Nadarajah* and *Batuwantudawe*), for applicant.

H. V. Perera (with him *E. F. N. Gratiaen* and *D. S. Senanayake*), for first respondent.

F. A. Tissaverasinghe (with him *E. C. Paul*), for ninth and tenth respondents.

November 27, 1934. DALTON J.—

Objection has been taken by respondents to this petition on the ground that the appeal does not involve any claim or question to or respecting property or some civil right amounting to the value of Rs. 5,000 or upwards.

This matter arises out of testamentary proceedings. The present petitioner is the executor of one Sellatchi, who had presented to the Court a petition for letters of administration of the estate of her deceased husband Muttucaruppen Chetty Supramaniam Chetty. She died before the hearing of her petition was concluded in the lower Court, and the present petitioner, her brother-in-law and executor, was substituted as petitioner in her place. The petition by the substituted petitioner for letters of administration then continued without objection, all parties apparently being agreed that the principal question to be determined in the proceedings by the lower Court was whether Sellatachi and Supramaniam had been validly married. This was a question which necessarily

had to be decided before Sellatchi's right to administration could be adjudicated upon. After her death however, the question whether or not the substituted petitioner could have any claim to administer Supramaniam's estate seems to have been lost sight of, in view of the fact that the parties were still agreed in asking the Court for a decision on what seemed to them to be the principal matter in dispute, namely, the validity of the marriage and the legitimacy of the children.

The finding of the lower Court was against the claim of the substituted petitioner on this question, and on appeal to this Court against that finding his appeal was dismissed. No question was raised in the Court of Appeal as to the substituted petitioner's right to obtain letters of administration, assuming the Court had held the marriage to be a valid one. The substituted petitioner now asks for leave to appeal to His Majesty in Council.

The question of the test to be applied in ascertaining the value of the interest which the appeal involves has been answered by authority. In both *Sathasiva Kurukkal v. Subramaniam Kurukkal*[1] and *Ahamadu Lebbe v. Abdul Cader*[2] this Court held that the test to be applied is that referred to by Lord Selborne in *Allan v. Pratt*[3] In his words "the judgment is to be looked at as it affects the interests of the party who is prejudiced by it, and who seeks to relieve himself from it by appeal".

It is not seriously urged here that the interest of the petitioner appellant is of the value of Rs. 5,000 and upwards. What is urged is that by agreement of all the parties the question of the validity of the marriage and legitimacy of the children came to be the principal question to be determined; that question was determined against the children, and their claim directly involves a claim of over Rs. 5,000. The value of the estate of Supramaniam Chetty has not been ascertained, but it has been held it is a very small one. It is conceded, however, that, having regard to the *fidei commissa* referred to in the inventory filed (although these properties form no part of his estate) the interests of the children at stake, which depend upon their being the lawful issue of Supramaniam, exceed the sum of Rs. 5,000. It is a fact, however, that these children, who were respondents in the proceedings in the lower Court and also in the Court of Appeal, are not seeking to relieve themselves from any judgment by appealing. It is now urged that the substituted petitioner is seeking to appeal on their behalf, but he was not entitled to do so as substituted petitioner for letters of administration, nor is he in fact doing so, although a consequence of his appeal might be to give these particular respondents the relief, of which they are in search.

What the Court has to do on this present petition is to apply the provisions of rule 1 of Schedule I. of the Appeals (Privy Council) Ordinance, 1900, and the test to be applied, so far as this petition is concerned, is the one set out above. What is the value of the interests of the petitioner that are prejudiced by the judgment, from which he is seeking to obtain relief by appeal? Whatever that value may be, he has failed to show that it is of the value of Rs. 5,000 or upwards. No real attempt has in fact been made to show the value of his interest, the matter

[1] *31 N. L. R. 165.*

[2] *(1931) 33 N. L. R. 337.*

[3] *13 A. C. 780.*

relied upon being the value of the interests of the children of Supramaniam and Sellatchi, coupled with the argument that the substituted petitioner was in substance appealing on their behalf. The petition therefore must be refused with costs.

The further ground put forward that the question involved in the appeal is one of great general importance was properly not pressed.

DRIEBERG J.—

What the petitioner seeks in this case is a reversal of the judgment of the Supreme Court and that he be declared entitled to a grant of letters of administration of the estate of Supramaniam Chetty. The estate of Supramaniam Chetty being admittedly less than Rs. 5,000 in value, the appellant cannot say that the matter in dispute on the Appeal amounts to or is of the value of Rs. 5,000 or upwards. He seeks, however, to bring himself within the alternative in rule 1 (*a*) and says that the appeal involves, directly or indirectly, a claim or question to or respecting property or some civil right amounting to Rs. 5,000 in value. The fidei-commissary property, which is not part of Supramaniam's estate and to which the first to the fourth respondents (the children of Supramaniam and Sellatchi) would succeed if they are their lawful issue, is admittedly over Rs. 5,000 in value. The effect of the judgment of this Court is that they are not entitled to succeed to that property. It follows, therefore, that the appeal involves a question, which so far as it concerns the appellant, is not of the value of Rs. 5,000, the estate which he seeks to administer not being of that value, but it does affect the interests of the first to the fourth respondents exceeding in value that amount. Does this give the appellant a right of appeal?

It was urged that the main object of the claim by Sellatchi to administer the estate of Supramaniam was to obtain an adjudication on the validity of her marriage and the legitimacy of her children with the object of securing their reversion to the *fidei commissum* property. This appears to be so, but it must be remembered that these questions would have arisen on Sellatchi's application for letters even if the fideicommissary property was excluded, as it should have been, from the testamentary proceedings. This Court has in previous cases held that the claim or question in rule 1 (*a*) must be one affecting the party who seeks to appeal from the judgment, *Sathasiva Kurukkal v. Subramaniam Kurukkal*[1] and *Ahamadu Lebbe et al. v. Abdul Cader et al*[2]. In these cases the ruling in *Allan v. Pratt*[3] was followed. That was an appeal from a judgment of a Canadian Court. So far as I can gather from the reference to the subject in *11 Halsbury (Hailsham edition, p. 234)*, appeals from Canadian Courts are not governed by such a provision as in rule 1 (*a*). The principal of the decision, however, can be rightly applied to our rules and a petitioner for leave to appeal on the grounds stated in rule 1 (*a*) must show either that the matter in dispute on the appeal amounts to the value of Rs. 5,000 or upwards, or that the appeal involves directly or indirectly some claim or question respecting some property or civil right of his which is of that value. The property and rights of this value affected by this appeal are

[1] *31 N. L. R. 165.*

[2] *(1931) 33 N. L. R. 337.*

[3] *13 A. C. 780*

not those of the petitioner but of the first to the fourth respondents. The petitioner was appointed their guardian *ad litem*, this appears to have been done for the purpose of Sellatchi's application for letters, but it is not possible for this reason to regard this as an application for leave by them. This is not a case in which the Court should exercise its discretion under rule 1 (*b*).

I agree that the petition should be refused with costs.

Application refused.