making the same, or by some person lawfully authorized by him or her in the presence of a licensed notary public and two or more witnesses present at the same time, and unless the execution of such writing, deed, or instrument be duly attested by such notary and witnesses.

"Section 17. None of the foregoing provisions in this Ordinance shall be taken as applying to any grants, sales or other conveyances of land or other immovable property from or to Government, or to any mortgage of land or other immovable property made to Government or to any deed or instrument touching land or other immovable property to which Government shall be a party, or to any certificates of sales granted by fiscals of land or other immovable property sold under writs of execution."

It is plain that the alleged oral agreement falls within section 2, whether as an agreement for effecting the sale of immovable property or as an agreement for establishing an interest affecting land or other immovable property. If so it would not be "of force or avail in law" unless it was saved by section 17; for it was not in writing as prescribed by section 2 and, necessarily, its execution was not notarially attested. Was it then saved by section 17? In their Lordships' opinion it was not. It appears to them that, while section 2 deals with transactions and enacts that they must be reduced to writing as therein prescribed, section 17 deals with instruments, i.e., with transactions which have already been reduced to writing, and exempts certain classes of instruments from the necessity of notarial attestation. The language of the section "grants, sales, or other conveyances" and "any deed or instrument touching land, etc.," points irresistibly to this conclusion. There is nothing therefore in the section which saves oral agreements for the sale of immovable property by Government from the necessity of being reduced to writing. Nor is there any reason to suppose that this is a *casus omissus*. The present case is sufficient to show how desirable it is that an agreement for the sale of immovable property should be in writing, even if one of the parties to the agreement is the Crown through one of its servants. On this ground also, therefore, the appeal must fail.

For these reasons their Lordships will humbly advise His Majesty that this appeal should be dismissed. The appellant must pay the respondent's costs of the appeal.

Appeal dismissed.

1950 *Present* : **Dias S.P.J. and Pulle J.**

JAN SINGHO, Petitioner, *and* ABEYWARDENE *et al.*, Respondents

S. C. 613—Application for revision in D. C. Negombo, 15,116

Civil Appellate Rules, 1938—Meaning of "Final Appeal" and "Interlocutory Appeal".

H instituted proceedings for divorce against his wife W who, while denying the charges, counter-claimed for a judicial separation. W also obtained before

trial an order for alimony *pendente lite*. In the main action H's suit was dismissed, while on W's counter-claim the Court decreed a judicial separation but made no provision for permanent alimony. H appealed against that decree. W then asked for an order that alimony should continue and the Court thereupon made an order. From that order H preferred a second appeal.

Held, that the appeal against the main decree was a "final" appeal while the second appeal in regard to W's application for alimony was an "interlocutory" appeal within the meaning of the Schedule to the Civil Appellate Rules, 1938.

THIS was an application for revision in respect of an order of the District Court, Negombo.

Cyril E. S. Perera, with *T. B. Dissanayake*, for the petitioner.

G. T. Samarawickreme, for the 1st defendant respondent.

Cur. adv. vult.

May 16, 1950. DIAS J.—

The plaintiff petitioner instituted proceedings for divorce against his wife, the 1st respondent, who, while denying her husband's charges, counter-claimed for a judicial separation. She had obtained before trial an order against the petitioner for the payment of alimony *pendente lite*.

The District Judge dismissed the petitioner's action against the 1st respondent, and entered a decree for judicial separation on her counter-claim. The decree said nothing about the payment of permanent alimony. The petitioner appealed against that judgment and decree, and that appeal is now pending.

The 1st respondent applied to the District Judge for alimony until the appeal was decided. The petitioner opposed that application. The District Judge directed that the original order for alimony *pendente lite* was to be operative until the pending appeal was decided. The Judge held that after that appeal was decided, an order for permanent alimony would be made by him after inquiry, if it became necessary to do so. From that order, too, the petitioner filed an appeal; and it is with that appeal we are now concerned.

The question for decision is whether that appeal is a "Final Appeal", or whether it is an "Interlocutory Appeal" within the meaning of the Schedule to "The Civil Appellate Rules, 1938"[1].

Those Rules were framed by the Judges of the Supreme Court under sections 49 and 50 of the Courts Ordinance. They provide for the typing of the briefs in civil cases in which appeals have been filed. These briefs are made by the staff of the original Court, and the appellant

[1] "*Ceylon Government Gazette*" no. 8,441 *of March 24, 1939*, and also reproduced at p. 6 of the 1941 Supplement of The Subsidiary Legislation of Ceylon between June 30, 1938, and January 1, 1941.

has to pay the fees prescribed in the Schedule to the rules. Rule 4 provides that the failure of an appellant to make application for typewritten copies in accordance with the requirements of the rules, renders the appeal liable to be abated.

The Schedule to the rules provides for three classes of civil appeals—(*a*) Final appeals from District Courts, (*b*) Interlocutory appeals from District Courts, and (*c*) Appeals from Courts of Requests. There are no "Interlocutory appeals" in Court of Requests cases—*Manchohamy v. Appuhamy*[1]. In the case of "Final appeals" from District Courts in "Matrimonial cases", such appeals are to be paid for as prescribed in Class 4, i.e., the fee is Rs. 15. In the case of "Interlocutory appeals" from District Courts, while for "Partition actions" the fee is Rs. 12, "in all other interlocutory appeals" the fee is fixed at Rs. 8.

Therefore, in the present case, if the appeal is a "Final appeal", the action being a "matrimonial action", the fee for typewritten copies would have to be Rs. 15, whereas, if the appeal is to be deemed an "Interlocutory appeal", the fee would be only Rs. 8.

The petitioner treated his appeal as being an "Interlocutory appeal", but by mistake paid a sum of Rs. 12, whereas the prescribed fee is only Rs. 8. The 1st respondent, however, was able to persuade the District Judge that this appeal was a "Final appeal", and succeeded in obtaining an order that the appeal had abated on the ground that the proper fee of Rs. 15 had not been paid. Hence this application in revision.

Unlike in the Courts of Requests, an appeal lies as of right against every order, judgment, or decree in a District Court—s. 73, Courts Ordinance. The Courts Ordinance, however, draws no distinction between appeals which are "final" and those which are "interlocutory". It has, nevertheless, been the practice to classify appeals in District Court cases into these two categories; and the Legislature has, at least in one case, recognised this distinction—see section 27 of the Land Acquisition Ordinance (Chapter 203) where it is provided that appeals to the Supreme Court under that Ordinance, shall be subject to the rules and practice provided for and observed in appeals from "interlocutory" orders of District Courts. The Civil Appellate Rules, 1938 also recognise that distinction.

What then is the distinction between a "Final appeal" and an "Interlocutory appeal"? There is no statutory definition of either expression.

Counsel for the 1st respondent cited the case of *Arlis Appuhamy v. Siman*[2] and similar cases in regard to the construction placed on the words "final judgment" as used in section 36 of the Courts Ordinance in regard to appeals from Courts of Requests. In my opinion, those cases have no relevance to the question which arises in the present case. A "Final judgment" means a judgment awarded at the end of an action which finally determines or completes the action, and a "Final appeal" is an

[1] *(1905) 8 N. L. R. 307.*
[2] *(1947) 48 N. L. R. 298.*

appeal from such a judgment. On the other hand, an " Interlocutory judgment " is a judgment in an action at law given upon some defence, proceeding, or default which is only intermediate, and does not finally determine or complete the action. An "Interlocutory appeal" is an appeal from such a judgment [1]. I am indebted to my learned brother who has drawn my attention to the recent case of *Egerton v. Shirley* [2]. It is regrettable that the Bench should have to search for authorities which it is the duty of the Bar to have cited at the argument. *Egerton v. Shirley* makes the meaning of these expressions clear. It was held in that case that an order made by a master under *R. S. C. Order 14* giving leave to the plaintiff to sign judgment against the defendant in an action brought under *R. S. C. Order 3, Rule 6*, is a " Final order " which finally disposes of the rights of parties. Where, at the same time, the master gives leave to the plaintiff to proceed to execution under the Courts (Emergency Powers) Act, 1943, and a Judge affirms that order, it is an " interlocutory order " within the Supreme Court of Judicature (Consolidation) Act, 1925, section 15. Du Parcq L.J. said: " No definition of the terms ' Final ' and ' Interlocutory ' is contained either in the rules of the Supreme Court or in the statute . . . . In our opinion, the rights of the parties in this case were finally disposed of when leave to sign judgment was given by the master. All that remained was to set in motion, or to retard the machinery for enforcing, and, in that sense, working out those rights. The order made by Cassels J. merely removed a stay which the statute imposed in the absence of such an order. It no more finally disposed of the rights of the parties, than does, for instance, the issue of a writ of possession to a plaintiff whose right to possession has already been determined. On this ground, we are satisfied that the order was an ' interlocutory ' one within the meaning of the Rules ".

Applying these principles to the facts of this case, it is clear that a " final " judgment was pronounced when the District Judge entered decree dismissing the plaintiff petitioner's case and ordered a judicial separation on the counter-claim of the 1st respondent. The 1st respondent's application for a continuance of alimony thereafter and the order made thereon are clearly " interlocutory ". The very terms of the order show that it finally determines nothing. The appeal from that order therefore must be deemed to be an " Interlocutory appeal ".

The petitioner was, therefore, right in treating his appeal as being an " Interlocutory appeal ", and the District Judge was wrong in ordering that appeal to abate. The order of abatement is set aside with costs. The District Judge is directed to transmit the record and the briefs to this Court for disposal in due course.

PULLE J.—I agree.

Order set aside.

[1] *Mozley & Whiteley's Judicial Dictionary, pp. 139, 177 ; also see Stroud's Judicial Dictionary & Wickremanayake's Judicial Dictionary.*
[2] *(1945) 1 K. B. 107.*