1942 *Present:* **Howard C.J. and de Kretser J.**

SETTLEMENT OFFICER *v.* VANDER POORTEN *et al.*

120—D. C. (Inty) Ratnapura, 6,940.

Privy Council—Application for conditional leave—Final Order—Order made by the District Court on the exercise of special jurisdiction—No appeal to Supreme Court—Order not appealable to Privy Council—The Appeals (Privy Council) Ordinance (Cap. 85), s. 3.

No appeal lies to the Privy Council from an order made by the Supreme Court dismissing an appeal from the District Court from an order made by the latter in the exercise of a special jurisdiction vested in it under the Waste Lands Ordinance.

A final order means an order which finally disposes of the rights of parties.

Palaniappa Chettiar et al v. The Mercantile Bank of India et al **(43 N. L. R. 352) referred to.**

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

H. V. Perera, K.C. (with him *E. G. Wickremanayake*), for the petitioner.

H. H. Basnayake, C.C., for the Settlement Officer (respondent).

Cur. adv. vult.

July 14, 1942. HOWARD C.J.—

This is an application for conditional leave to appeal to the Privy Council under Rule 1 (*a*) contained in the Schedule to The Appeals (Privy Council) Ordinance (Cap. 85). The application is opposed by Counsel for the respondent on the following grounds:—

(*a*) The order from which leave to appeal is prayed is not a final judgment of the Court;

(*b*) The order from which leave to appeal is prayed was not made in a civil suit or action in the Supreme Court within the meaning of these words in section 3 of Cap. 85;

(*c*) As the Supreme Court held that there was no appeal from the order of the District Judge, there was no suit or action in the Supreme Court and hence there could be no appeal to the Privy Council.

With regard to (*a*), various cases have been cited by Counsel for the applicant including *Palaniappa Chettiar and Two Others v. Mercantile Bank of India and Others*[1]. In my judgment in that case, I cited the following passage from the judgment of Fry L.J., in *Salaman v. Warner*[2]:—

"I think the true definition is this. I conceive that an order is 'final' only where it is made upon an application or other proceeding which must, whether such application or other proceedings fail or succeed, determine the action. Conversely, I think that an order is 'interlocutory' where it cannot be affirmed that in either event the action will be determined."

In citing this definition I was misled by the following passage from the judgment of Viscount Cave in *Ramchand Manjimal and Others v. Goverdhands Vishandas Ratnachand and Others*[3]:—

"The question as to what is a final order was considered by the Court of Appeal in the case of *Salaman v. Warner* and that decision was followed by the same Court in the case of *Bozson v. Altrincham Urban District Council.*"

Reference to the case of *Bozson v. Altrincham Urban District Council*[4] shows that *Salaman v. Warner* (*supra*) was not followed, but an earlier case *Shubrook v. Tufnell*[5], which was in conflict with the decision in *Salaman v. Warner*. The principle laid down in *Shubrook v. Tufnell* (*supra*) was that, if the judgment entered put an end to the action, the order was final.

The test of finality was further considered by the Privy Council in the latter case of *Abdul Rahman v. Cassim and Sons*[6] where the earlier case was cited. It was held that the test of finality is whether the order "finally disposes of the rights of the parties". Where the order does not finally dispose of those rights, but leaves them "to be determined by the Courts in the ordinary way" the order is not final. Having regard to the decisions in *Bozson v. Altrincham Urban District Council* (*supra*) and *Abdul Rahman v. Cassim & Sons* (*supra*) the passage cited by me in *Palaniappa Chettiar v.Mercantile of Bank India* (*supra*) from the judgmentofFry L.J.in *Salaman v.Warner* (*supra*) cannot be regarded as the law. The test offinality

[1] *43 N. L. R. 352.*
[2] *(1891) 1 Q. B. 734.*
[3] *A. I. R. 1920, P. C. 86.*
[4] *(1903) 1 K. B. 547.*
[5] *(1882) 9 Q. B. D. 621.*
[6] *A.I.R. 1933 P. C. 58.*

is that formulated in *Shubrook v. Tufnell* (*supra*). The rights of the parties in the present case were in my opinion finally disposed of by the order made by the Supreme Court. Hence is was a final order.

The question as to whether the order was made in a "civil suit or action in the Supreme Court" does not lend itself to such easy solution. It has been contended by Mr. Basnayake for the respondent that the District Court in this case was not exercising the jurisdiction conferred on it by the Courts Ordinance, but was sitting as a special tribunal. The Courts Ordinance provides for an appeal to the Supreme Court only in cases where the District Court is exercising the jurisdiction conferred on it by the Courts Ordinance. No appeal to the Supreme Court was provided by the Waste Lands Ordinance or the Land Settlement Ordinance. In these circumstances there was no "civil action or suit in the Supreme Court". In support of this contention Mr. Basnayake cited various decisions of this Court. In *Soertsz v. Colombo Municipal Council*[1] it was held that there is no right of appeal to the Privy Council from a judgment of the Supreme Court on a case stated under section 92 of the Housing and Town Improvement Ordinance, No. 19 of 1915. In coming to this decision a bench, constituted by Fisher C.J. and Drieberg J., held that in dealing with the matter under consideration the Supreme Court was not acting in exercise of the appellate jurisdiction vested in it by the Courts Ordinance nor was the District Court acting in exercise of any jurisdiction vested in it by that Ordinance. The Supreme Court had authority to deal with the matter under section 92 of the Housing and Town Improvement Ordinance. This Ordinance, however, was silent with regard to applications for leave to appeal from decisions under that section and hence finality was imposed of them. A right of appeal, if not expressly given, could not be inferred. Moreover, so far as appeals from District Courts to the Supreme Court are concerned, the appellate jurisdiction of the Supreme Court and the powers of the Court of Appeal relate solely to the exercise by District Courts of the jurisdiction conferred upon them by the Courts Ordinance. This case was followed in *R. M. A. R. A. R. R. M. v. The Commissioner of Income Tax*[2] where it was held that there is no right of appeal to the Privy Council from a judgment of the Supreme Court on a case stated under section 74 of the Income Tax Ordinance.

The applicability of these two cases involves a consideration of the jurisdiction that was being exercised in this matter both by the Supreme Court and the District Court. Proceedings in respect of the premises were originally commenced under the Waste Lands Ordinance, No. 1 of 1897, by settlement notice being published in the *Government Gazette* on September 21, 1928. During the course of the proceedings the Waste Lands Ordinance was repealed by the Land Settlement Ordinance, 1931 (now Cap. 319). The proceedings were continued under the Waste Lands Ordinance and find order dated March 29, 1940, was made under that Ordinance as amplified by sections 3 (3) and 32 of the Land Settlement Ordinance. No claim in pursuance of the notice of September 21, 1928, had been made by the applicant or by A. J. Vander Poorten within the time prescribed. Thereafter the applicants, purporting to act

[1] *32 N. L. R. 62* [2] *37 N. L. R. 447*

under section 24 of the Land Settlement Ordinance, presented a petition to the District Judge claiming the premises. This petition was dismissed with costs. The applicants subsequently appealed to the Supreme Court against the decision of the District Judge and on the respondent taking a preliminary objection that no appeal lay, the objection was upheld and the appeal dismissed. The applicants now desire to appeal to the judicial Committee of the Privy Council against the dismissal of their appeal by the Supreme Court.

In the Supreme Court, Counsel for the applicants conceded that no appeal lay under section 24 of the Land Settlement Ordinance, but contended that the petition constituted a good and sufficient claim under section 20 of the Waste Lands Ordinance. The Court held, however, that section 20 did not confer a right of appeal from an order made thereunder and the preliminary objection must prevail. In view of the circumstances in which the claim of the applicants had arisen, can it be said that the latter were parties to a civil suit or action in the Supreme Court ? Inasmuch as the District Court was not exercising any jurisdiction conferred by the Courts Ordinance, the appeal to the Supreme Court was not made in pursuance of any right of appeal given by the Courts Ordinance. It was, however, contended that there was an appeal under section 20 of the Waste Lands Ordinance. This contention was rejected. If the contention, however, had been upheld and the Supreme Court had proceeded to hear the appeal on its merits and dismissed it there would, having regard to the decision in *Soertsz v. Colombo Municipal Council (supra)*, have been no right of appeal to the Privy Council, in view of the fact that no specific right of appeal to such authority is given by the Waste Lands Ordinance. In my opinion, the applicants are not in any better position by reason of the fact that the appeal was dismissed by reason of a preliminary objection which was upheld with regard to the jurisdiction of the Supreme Court.

For the reasons I have given, the application fails and must be dismissed with costs.

DE KRETSER J.—I agree.

Application refused.