1937 *Present :* **Abrahams C.J. and Maartensz J.**

JURY *v.* ATTORNEY-GENERAL *et al.*

121—D. C. Colombo, 3,541

Fidei commissum—*Joint will—Gift of property to male descendants of devisees —Meaning of expression—Cross objections by one respondent against another—Civil Procedure Code, s. 772.*

Where property was left by joint-will, after the death of the survivor to the nephews of the testator and "after their death to be descended to their male descendants", and the will further provided, after a prohibition against alienation, that the said heirs and their descendants shall possess the same under the bond of *fidei commissum*",—

Held, that the expression "male descendants" meant descendants claiming through males only.

Held further, that the limitation to male descendants was not restricted to the immediate children of the original devisees.

It is not open to the respondent to an appeal to file cross objections to a decree in favour of another respondent.

BY their joint last will dated February 28, 1868, Francisco Pulle and his wife Lucia devised after the death of the survivor all their landed property to Francisco's deceased brothers' two sons, Miguel Jury Christoffel and Francisco Jury Christoffel, and after their "death to be descended to male descendants." The will further declared "that the said property cannot be sold, mortgaged or otherwise alienated . . . ., and the said heirs and their descendants shall possess the same under the bond of *fidei commissum* . . . ." The will was proved in testamentary action No. 3,541 of the District Court of Colombo. In 1875 one of the properties devised was acquired by the Crown. The compensation

amounting to Rs. 2,900 was deposited in the Loan Board on April 18, 1888. Interest on this amount was drawn on September 16, 1890. As no claim to the money or interest was made after that date, the principal and interest was credited to the revenue on December 13, 1900.

Miguel Jury Christoffel died leaving a son Christopher, who died unmarried, and a daughter Anne, whose children are not represented in the proceedings. The other devisee Francisco Jury died, leaving a son Anthony, who was twice married. By his first marriage he had a daughter Flora, the intervenient, who has a son. The petitioner is Anthony's second wife.

The intervenient claimed that her son is entitled to sum of Rs. 2,900 as a male descendant of Anthony.

The petitioner alleged that male descendant meant male descendant in the male line and that the *fidei commissum* terminated by the death of Anthony and Miguel without male issue.

H. V. Perera, K.C. (with him *N. Nadarajah*), for intervenient, appellant.—The *fidei commissum* was in favour of the male descendants of the two devisees under the will, *i.e.*, Miguel and Francisco Jury. Miguel's son predeceased him who thus left an only daughter Anne, who died leaving as heirs eight children who are not parties to these proceedings. Francisco Jury died leaving a son, Anthony, who was twice married. By the first marriage he had a daughter Flora, who has a son. The petitioner was Anthony's second wife. There was no issue of this marriage.

[MAARTENSZ J.—Are the sons of daughters male descendants ?]

Anthony died in 1935 and his widow, the petitioner, was the administratrix. The Attorney-General states, that the money in this case—the proceeds of compensation for the acquisition of property—irrevocably lapsed to revenue, but between the appellant and the respondent, the position is whether there was a *fidei commissum* binding Anthony.

[MAARTENSZ J.—Did the *fidei commissum* end on Anthony's death, as he left no son but only a daughter ?]

There is no doubt that male descendants are descendants who are males ; the son of a daughter of a man is a male descendant.

[MAARTENSZ J.—Should the descent be through males ?]

It could then have been worded male descendants on the male line.

[ABRAHAMS C.J.—Suppose Miguel and Anthony left no sons—would the property lapse ?]

Irrespective of the line of descent, the children would succeed if they were males.

[ABRAHAMS C.J.—Supposing the daughter leaves a son, what happens ?]

The son would get the property, but not so the daughter. When successive classes are to take the property, we go to the last holder. The nearer class excludes the more remote.

A *fidei commissum* cannot be held in suspense till the descendants come into existence. If at the death of the testator, there is no proper fideicommissary, the *fidei commissum* lapses ; but the intestate heirs enjoy the property and hold it in trust for the proper male heirs, in the interval between the death of the last holder and the accrual to a proper descendant.

Here there is a real prohibition and members of that group will take property according to closeness of relationship to last holder, and the prohibition will be, till members of the proper class are born.

[ABRAHAMS C.J.—In English law, descent is through males and a male descendant is one descended through a male.]

We do not have the same meaning here as in the English law.

Where land is devised by a testator, the devise should be construed in the way least divergent from the legal manner. Here both females and males are to enjoy. The testator may have stated :—" I do not want females to enjoy my property ". In early days one could understand why property was not left to females as the latter on their marriage handed over their property to the husband (or to the community of property). Here the will was in 1868.

If the Attorney-General is to succeed in his objections against me and the respondent, he should have filed an appeal. I ask for no relief against him. He says : " Long years ago, this money lapsed to revenue. You come in too late ". The acquisition was in 1875.

[MAARTENSZ J.—Does the *fidei commissum* go beyond the immediate generation ?]

Yes. There was a real and further prohibition imposed on the sons of the nephews, *vide* " and the said heirs and *their descendants* shall thereafter hold in *fidei commissum* ". Note the words " male descendants " are not used. Therefore Flora will come in as a fiduciary. Either she is entitled to the property subject to a *fidei commissum* or her son should get the property in its entirety. In any case, the *fidei commissum* has *not* come to an end.

Grandsons would include sons of daughters. Here the words " said descendants " are not used. Thus the children and grandchildren of the nephews as substitutes form the first set. Anthony, being a male descendant, the property went to his heirs, whether descended from males or females. Here there is a distinction drawn between (i) male descendants and later (ii) their descendants.

The descendants alive at the deaths of Migel and Francisco will not inherit in succession ; but the nearer would exclude the remote. A son's son is excluded by the son. In this case the immediate devisees and the male descendants are described as heirs. It may be noted that " The said heirs ", including male descendants, " and their descendants shall hold under *fidei commissum.* "

The exclusion of females ceases after the death of the heirs. After Anthony's death, the limitation ceases. The words " their descendants " cannot refer only to the descendants of Migel and Francisco. It necessarily implies that the class is now expanding.

The reason why he institutes male descendants as heirs is because he wishes to emphasize the exclusion of females. The words " the properties . . . . . shall wholly be left to their maintenance and support " indicate the life-interest of the male descendants. Further on the words their descendants refer to a later stage of descendants, male and female without limitation ; and these are indicated as beneficiaries..

A son excludes a grandson, but a son does not exclude a son of a predeceased son. Here the *fidei commissum* has not come to an end as Flora's son is living. The petitioner's claim should be disallowed as she claims as the widow on her husband's intestacy; for if there is a *fidei commissum*, this property does not go to the estate.

As regards the Attorney-General's objection—*vide* section 772 of the Civil Procedure Code. That procedure is available to a respondent who has gained a benefit by the decree, to one who claims a further benefit, and not to one against whom an order was made. For should he succeed, he succeeds not only against the appellant but also against the respondent. Vide *Croos v. Fernando* [1], *Doloswela Rubber and Tea Estate Company v. Swaris Appu* [2]. He who desires to question the decree in favour of another respondent should establish an identity of interest. The Attorney-General's appeal should be against the party to whom something has been given. Here that person is the respondent. The interest accumulated up to 1935 and payable to Anthony is payable to me who are Anthony's heir. *Vide* section 18 of the Loan Board Ordinance, No. 4 of 1865. By an order of Court, the money was sent to the Loan Board, and that money is subject to the directions of Court, section 20. It was only in 1911 that Anthony had the right to the corpus. A third of a century has not elapsed since that date, and therefore no forfeiture applies.

N. Kumarasingham (with him *K. Herat*), for petitioner, respondent.—The cross-objections of the Attorney-General should not be entertained as no appeal has been preferred by him from the order against him. He cannot attack the order of the District Judge on the main points.. There is a special significance in the omission of male descendants in clause 2 of the will. Male descendants mean those descended in a male line. In the first place, the property here is left to the two sons of his brother. Vide *Bernal v. Bernal* [3], where male descendants "were held to mean descendants claiming through males only". Vide also *Oddie v. Woodford* [4], where it was held that the designation "eldest male lineal descendant" was inapplicable to a male person claiming in part through a female. *Vide* also *Trigona v. D'Amico* [5], and *Jarman on Wills, vol. II. (6th ed.). p. 1562.*

Clause 1 read with clause 3 and clause 6 indicates that the fideicommissary heirs are the male descendants of the two nephews. On failure of male descendants with the death of our husband, we (the petitioners) are entitled to one half of the estate and our step-daughter to one half. On our husband's death, the property was released from the *fidei commissum*, and therefore the succession would be as on an intestacy. (Vide *Steyn, p. 220.*)

H. V. Perera, K.C., in reply.—Dealing with "male descendants" after the male descendants have held the property, the further fideicommissaries are the descendants. Does the term "heirs and descendants" mean (1) only male descendants, or (2) only Miguel and Francisco, or (3) Miguel and Francisco and male descendants? The expression "male descendants" is not a term of ours, but an English term. If a person

[1] *(1913) 1 Bal. Notes of Cases 84.*
[2] *(1929) 31 N. L. R. 60*
[3] *(1838) 3 Mylne & Craig's Reports 559.*
[4] *(1821) 3 Mylne & Craig 584 at p. 605.*
[5] *61 L. J. (p.c.) 8.*

of male sex was intended, could not the testator have used "male descendant". Is "male" the qualification of a class or a reference to the sex? why should it not mean descendants who are males. Vide *10 Hares Report 389*, "nearest of kin" in male line in preference to female line, was held not to be indicative of sex. It is not necessary to draw the descent continuously from males, and therefore not in a line of males. "Male descendant" can be used (1) as a complex word, and as such indicates the line, or manner of descent; or (2) male as an adjective and descendant as a noun. Here, it would mean descendants who are males, indicating the sex of the descendant and not the manner of descent.

J. E. M. Obeyesekere, C.C., for Attorney-General.—The intervenient desires the Attorney-General to bring into Court further interest. His appeal against the order of the District Judge's confining the decree to the amount at the date 1900, and his prayer that the Attorney-General do pay interest from 1900 up to now, is relinquished. Therefore his appeal should be dismissed with costs.

As regards the status of the Attorney-General in these proceedings, he is in every sense a party to the proceedings.

[ABRAHAMS C.J.—If the order was against you, why did you not appeal? This present appeal is not on your behalf.]

As regards the appellant's objections—vide *British Corporation v. United Shipping Board*[1]. The Attorney-General, respondent, has the right to take cross-objections.

As regards the objection of the petitioner-respondent—vide *Doloswela Tea & Rubber Co. v. Swaris*[2]. There is an identity of interest between the intervenient and the petitioner. Money has been paid to revenue, and they claim repayment from the Crown. The objections taken against the appellant are available against the respondent also. They claim the money which has been paid into revenue upon the same basis. Section 772 is similar to Order 41, Rule 22, of the Indian Code, 1908.

H. V. Perera, K.C., in reply.—Identity of interests is equivalent to the identity of interests that are claimed. My interests are directly opposed to those of petitioner-respondent. Here only part of the ground on which they rely are identical. That would not make the interests identical. Our contentions are identical, but not so our interests.

Where there is a three-cornered contest, there is always an identity of contentions. (Vide *Paldane v. Horatala*[3]).

Where there are two joint-debtors and one appeals while the other is a respondent—in fact an appellant, though on paper a respondent—only the latter can take cross-objections, section 772. Here the petitioner-respondent claims the whole of the property as administrator. I also claim the whole of it for Flora's son. Thus there is a conflict of interests. Therefore the Attorney-General can file cross-objections only against the appellant alone and that if he has got any relief. Thus the objections of the Attorney-General are not in order.

[MAARTENSZ J.—So far as the money is concerned, there are the claims against the Attorney-General, and thus the interests are identical.]

The District Judge held against the Attorney-General and against me. I made no claim as heir in Court, but as a fidei commissary.

[1] *36 N. L. R. 225.* [2] *31 N. L. R. 63*

[3] *(1925) 3 Times of Ceylon Law Rep. 58*

Kumarasingham, in reply—Our husband was the last fideicommissary heir under the will. We made an application on the ground of the lapse of the *fidei commissum* by our husband's death. Flora applied that the money be brought not to case No. 7,471 but to case No. 3,541. Her claim is in direct conflict with ours. The Attorney-General states that we are not entitled to the money as administratrix in case No. 7,471. Is it still subject to a *fidei commissum* ?

The Attorney-General has not appealed and after the appealable time we could have compelled him to bring the money to Court. It is not open to him in this Court to question the validity of the order against him.

We claim the money in action No. 7,471, but the appellant in 3,541. We come by conflicting rights, though appellant is also an heir in 7,471.

[MAARTENSZ J.—Here the Attorney-General claims relief against both the appellant and the respondent on the same grounds.]

The Attorney-General was satisfied with the order against him in my favour, and I was satisfied with the order. No appeal was preferred by him.

It is case law that provides exception to section 772, in which there is an identity of interest between the appellant and the respondent.

[ABRAHAMS C.J.—Both of you want to take away the money from the Attorney-General. If he succeeds, he succeeds against both, similarly if he fails.]

The bases of our rights are different, though we may claim the same sum of money.

Cur. adv. vult.

November 30, 1937. MAARTENSZ J.—

By their last joint will dated February 24, 1868, Anthony Jury Francisco Pulle and his wife Lucia Fernand declared that after the death of the survivor, "all the landed properties hereinafter mentioned as well as movable and all the monies shall devolve on the testator's deceased brother's two sons, viz., Miguel Jury Christoffel Pulle and Francisco Jury Christoffel Pulle, and after their death to be descended to their male descendants who are hereby nominate and institute as the heirs of them, the testator and testatrix, and they also declare that the landed properties which are in the town of Colombo cannot be sold, mortgaged or otherwise alienated, nor the rents and profits and income of the said properties cannot be seized, sold for any debts nor shall be attached to any writ or writs of execution nor the life-interest shall not be liable to be seized for any debts, but shall wholly be left to their maintenance and support and the said heirs and their descendants shall possess the same under the bond of *fidei commissum,* and the said heirs and their descendants shall not lease out the said landed properties without any notarial document and such lessee or lessees should be in possession of properties to the worth of upwards of fifteen pounds sterling, also on condition that such lessee or lessees to pay Government Assessment Tax and such lease shall not exceed for a period of more than one or two years".

The landed property referred to is specified in the third clause of the will. The third clause provided that each property "shall be held and possessed . . . . by the said Miguel Jury Christoffel Pulle and

Francisco Jury Christoffel Pulle immediately after the demise of the testator, and after their death by their male descendants under the bond of *fidei commissum*".

The will was proved in testamentary action No. 3,541 (old series) of the District Court of Colombo.

In 1875 one of the properties so devised—a house and grounds situated at Front street in the Pettah—was acquired by the Crown.

The compensation amounting to Rs. 2,900 was, by an order made in case No. 3,541 on March 12, 1888, deposited with the Loan Board on April 18, 1888. The interest on this amount up to the half year ending June 30, 1890, was drawn on September 16, 1890. As no claim to the money or interest was made after that date, the principal and interest was credited to revenue on December 13, 1900.

This sum of money is claimed adversely to each other by the petitioner and the intervenient-appellant.

It appears from the pedigree filed in this case that Miguel Jury Christoffel Pulle died leaving a son Christopher, who died in 1880 unmarried, and a daughter Anne, who died leaving as heirs eight children. They are not parties to these proceedings.

The other devisee, Francisco Jury, died leaving a son Anthony, who was twice married. By his first marriage he had a daughter Flora who has a son. The petitioner was Anthony's second wife. There was no issue of this marriage.

The intervenient claims that her son is entitled to the sum of Rs. 2,900 as a male descendant of Anthony. The petitioner alleges that "male descendant" means descendant in the male line and that the *fidei commissum* terminated by the death of Anthony and Miguel without male issue.

The argument for the appellant was that her son was a male and a descendant of Francisco Jury and that he therefore answered to the description of a male descendant prescribed by the will.

The question, what is meant by the term "male descendant", was decided in the case of *Bernal v. Bernal*[1], where "male descendants" was "held to mean, according to the English law (and *semble*, according to the Dutch law also), descendants claiming through males only".

Dealing with the argument that "male descendants" would include any male person who is a descendant, the Lord Chancellor said: "The gift, therefore, is (taking the particular case which has occurred) to his nephew Benjamin Bernal, and his male descendants; and such the order of August 15, 1837, declares to be the construction; the law of Holland permitting this species of provision of families. It must be considered, for the purpose of ascertaining who are to take, in the nature of an inheritance; the qualification to take being derived from the parties' descent; and that qualification is being male descendants. The general class is descendants; the qualification of the class is being male. To entitle anyone to claim, he must show that he is one of the favoured class; that is, one of the class of male descendants. A male descended from a female of the family, would undoubtedly answer the description, as he would be a descendant and a male; but he would not be one of the class of male descendants.

1 *(1838) 3 Mylne & Craig 559.*

"Such would be the ordinary acceptation of the terms. In speaking of a man and his male descendants, as a class, no one would conceive the son of a female descendant as included; and such is the construction which our law has put upon the words; as "issue male", which is, in fact, the same thing as male descendants.

"The case of *Oddie v. Woodford* appears to me to be a strong authority for the same purpose; for although the word "lineal" was much relied upon, the force of that word was to mark the class to which the party was to belong, in contra-distinction to the particular description of the individual. In no other sense could the term "lineal" be of any importance, as the party must have been lineally descended, whether descended through a male or a female; but considering the word "lineal" as indicating the class, and, therefore, as meaning a descendant of the male line rather than a male descendant, the House of Lords held the grandson of the testator's second son (being the son of a daughter of the testator's second son) not to be entitled. In this case, it is clear that the testator is speaking of and describing a class; which brings it directly within the principle of *Oddie v. Woodford*".

On the principle laid down in this case I hold that the intervenient's son is not a male descendant contemplated by the will.

It was also submitted by the appellant in the alternative that the limitation to male descendants was restricted to the immediate children of the devisees. This submission was based on two passages of the will. The first passage is as follows: "And after their (devisees') death to be descended to their male descendants who are hereby nominated and instituted as the heirs of them the testator and testatrix". The other passage provides that the "said heirs and their descendants shall possess the same under the bond of *fidei commissum*".

It was argued that the word "heirs" in the latter passage meant the devisees and their male descendants who were nominated heirs, and the words "their descendants" meant the descendants of the heirs without limitation to male descendants.

I am unable to accept this argument. It is in the highest degree improbable that the testators who intended to benefit the male descendants of the devisees would immediately thereafter limit the restriction to the immediate children of the devisees. I am accordingly of opinion that the words "their descendants" must mean the male descendants of the heirs. That the testators intended to limit the devolution of the property to male descendants is clearly borne out by the terms attached to each of the properties described in the third clause; that it should be possessed solely by the devisees after the demise of the testator(s) and after their death—that is, the devisees,—by their male descendants.

There are here no words to suggest that the limitation to "males" is restricted to the children of the devisees.

I am accordingly of opinion that the intervenient's appeal against the order made by the District Judge in favour of the petitioner should be dismissed with costs.

The intervenient's appeal against the order of the District Judge restricting the interest to be brought into Court to the interest, which accrued up to the date the principal sum was credited to revenue, was not pressed. This part of the appeal is therefore also dismissed with costs.

The Attorney-General against whom the order was made that the sum of Rs. 2,900 and interest should be brought into Court did not appeal from the order but filed objections to it under the provisions of section 772 of the Civil Procedure Code. The petitioner and the appellant took the preliminary objection that the Attorney-General should have filed a regular appeal and that it was not open to him to object to the order of the District Judge under the provisions of section 772 of the Code.

As we were not prepared to decide the preliminary objection without consideration, we heard arguments on the merits of the objections as well as on the preliminary objection.

I am of opinion after consideration that the preliminary objection taken by the petitioner-respondent must be upheld on the ground that one respondent cannot file cross-objections to a decree in favour of another respondent. (See *Croos v. Fernando* [1] and *Noordeen v. Chandrasekere* [2].)

In the case of *Paldano et al. v. Horatala et al.*[3], the decree declared X (the plaintiff), who had claimed the whole land, entitled to one-third of the land, A and B to one-third, and C and D to one-third. A and B appealed and X filed cross objections. It was held that these cross objections were good as against A and B but not as against C and D. The distinction made in this case is of no avail to the Attorney-General as the order made against him in favour of the petitioner and appellant is not separable.

Jayewardene J. said in that case that a respondent cannot be heard by way of cross-objection on appeal against another respondent, and added that the rule is subject to certain exceptions, but did not refer to them.

Drieberg J. referred to this dictum in the case of *Doloswela Rubber and Tea Estate Company v. Swaris Appu* [4], and said it recognized the possibility of certain exceptions, and added that "an exception may be allowed in cases where there is an identity of interests between the appellant and the respondent against whom the statement of objections is directed".

It was accordingly urged on behalf of the Attorney-General that it was open to him to file objections under section 772 against both the appellant and the petitioner respondent as their interests were, as between them and the Attorney-General, identical.

It was argued that although the petitioner and the respondent claimed the sum in dispute adversely to each other yet they were both interested in the money being brought into Court. That appears to be the case. But I am not prepared to assent to the dictum of Drieberg J., which was *obiter* to the question to be decided by him. He cited no authority in support of it nor were we referred to any by Counsel for the Attorney-General.

I am of opinion that the proviso to section 772, requiring the respondent to give the appellant or his Proctor seven days' notice in writing of his objections clearly limits the rights of the respondent under section 772 to objections which affect the appellant only. This opinion is supported

[1] *(1913) 1 Bal. Notes of Cases 84.*
[2] *(1913) 1 Wijewardene's Reports 24.*
[3] *(1925) 3 Times of Ceylon Law Rep. 58.*
[4] *(1929) 31 N. L. R. 60.*

by the decisions which I have cited and by the case of *Timmayya Mada V. Lakshamana Bhakta* [1], where the Court discussed the effect of sections of the Indian Codes corresponding to section 772. It would appear from this case that it was repeatedly held by the High Court of Calcutta that cross-objections under section 348, the corresponding section of the Code of 1859, were restricted to matters in contention between the objecting respondent and the appellant. In the Code of 1877 the corresponding section required seven days' notice of the objections to be given to the appellant and his pleader, and the Court observed that if it had been allowed to stand it might possibly have formed a good ground for adopting the narrower construction of the section.

This clause was repealed by the Act of 1879 which substituted the following proviso to the corresponding section 561: "Provided he has filed a notice of such objection not less than seven days before the date fixed for the hearing of the appeal". This clause was as far as I can see the clause in force when the question was argued whether a respondent could take exception to a part of a decree in favour of another respondent and it was held that he could. The facts were as follows: A obtained a decree for possession of a land against B and for costs against B, C, D and others, defendants in the suit. C and other defendants appealed against this decree so far as it awarded costs aganist them, making A and D respondents to the appeal. D under section 561 objected to that part of the decree which awarded possession of the land to A. It was held in appeal, reviewing the judgment of the subordinate judge, that it was open to D, although improperly made a party to the appeal by C against A, to take objection to the rest of the decree.

In view of the observations in the judgment I am of opinion that the decision of the subordinate judge would have been affirmed if the clause of the Code of 1877 had not been repealed.

Since this decision a new Code was enacted which came into force in 1882. Section 561 of this Act provides for cross-objections being filed in Court by a respondent within one month from the service of the notice of the day fixed for hearing of the appeal or within such time as the Appellate Court may see fit to allow.

Section 48 of the Act VII of 1888 provided that "unless the respondent files with the objections a written acknowledgment from the appellant or his pleader of having received a copy thereof the Appellate Court shall cause such a copy to be served as soon as may be after the filing of objections on the appellant or his pleader at the expense of the respondent". This amendment, in my judgment, had the effect of limiting the objections to such as would not affect the other respondents.

The identity of interests mentioned by Drieberg J. in the case I have referred to possibly refers to appeals under the provisions of section 760 of the Civil Procedure Code which enacts as follows: "Where there are more plaintiffs or more defendants than one in an action, and the decree appealed against proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal against the whole decree, and thereupon the Appellate Court may reverse or modify the decree in favour of all the plaintiffs or defendants, as the case may be".

[1] *(1883) I. L. R. 7 Mad. 215.*

I am of opinion that even in such a case a respondent cannot by filing objections under section 772 of the Code deprive a party who has not appealed of what he has obtained under the decree. I rest my opinion on the provision that notice of the objection must be given to the appellant and that there is no provision by which the respondent filing cross objections can give notice to a co-respondent.

The exception suggested by Drieberg J. would, if adopted, mean, to take a particular case, that if A, B, and C bring an action and partly succeed on a ground common to all three, and one of them appeals, a defendant, by filing a cross-objection, may deprive the plaintiffs who have not appealed of the benefit of the decree, although they were not entitled to notice of the cross-objection. The fact that the appeal by A might be of benefit to B and C does not in my opinion deprive them of the right to notice of an objection which, if given effect to, would prejudice them.

If the intention of the legislature was that cross-objections might be filed under section 772 either against the appellant or the other respondents I have no doubt some provision would have been made for notice of such objection being given to the respondents.

The fact that the Attorney-General has in fact given notice of his objections to the petitioner-respondent does not in my judgment enlarge the scope of the section.

I accordingly uphold the preliminary objection of the petitioner-respondent to the cross-objections being entertained against him. As the order against which objections were filed is not separable the appellant cannot be deprived of the advantage, if any, she has gained by the order.

The objection to the order must therefore be dismissed. I would make no order as to costs as I do not think either the petitioner or the appellant has incurred any additional costs as a result of the objections being filed.

ABRAHAMS C.J.—I agree.