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

AMMAL *et al. v.* IBRAHIM *et al.*

287—D. C. Nuwara Eliya, 1,589.

Privy Council—Application for conditional leave—Notice to opposite party—Party to original action, who is not party to appeal—Person interested—Appeals (Privy Council) Ordinance, 1909, Rule 2, Schedule I.

Any party to an original action, who has not been a party to an appeal cannot be deemed to be a party interested in an appeal to the Privy Council, who is entitled to notice under Rule 2 of the rules in Schedule I of the Appeals (Privy Council) Ordinance, 1909.

APPLICATION for conditional leave to the Privy Council.

C. Nagalingam, in support.

L. A. Rajapakse (with him *N. Nadarajah*), *contra.*

July 21, 1937. ABRAHAMS C.J.—

The petitioner's application for conditional leave to appeal to the Privy Council from a judgment of this Court is objected to for two reasons. A brief recitation of certain preliminary facts is perhaps necessary. The cited respondents in this matter were three plaintiffs in the District Court of Nuwara Eliya. They brought a partition action in respect of certain lands and buildings in which they allotted to themselves certain shares, to six defendants certain other shares and to seven other defendants also certain other shares. The last mentioned seven defendants claimed the whole of the properties aforesaid. The learned District Judge dismissed the plaintiffs' action, and in the course of his judgment observed that the six defendants above named had renounced any rights they may have had to any share in the land and premises.

The plaintiffs appealed to the Supreme Court, and Fernando A.J. in a judgment, with which Moseley J. agreed, set aside the judgment of the District Judge and sent back the case for an order of partition to be entered on the footing that the plaintiffs were entitled to the shares they claimed. From this judgment the seven defendants now apply for conditional leave to appeal to the Privy Council.

The first objection raised by the named respondent is that this is not a final judgment within the meaning of Rule 1 (*a*) of the Rules in Schedule I of the Appeals (Privy Council) Ordinance, 1909. This objection has not been strongly urged. What is a final judgment has been the subject of more than one decision of this Court, and the difficulty in attempting a comprehensive definition of it has been acknowledged more than once. I do not propose to attempt a definition. I content myself by saying that the judgment of the Supreme Court in this case is a final judgment because it purported to settle finally the issues between the parties to the action, and that nothing more was required to be determined save the purely quantitative matter of working out the shares of the parties.

The other objection is this, Rule 2 of the above-mentioned Rules says that "Application to the court for leave to appeal shall be made by petition within thirty days from the date of the judgment to be appealed from, and the applicant shall, within fourteen days from the date of such judgment, give the opposite party notice of such intended application." It is now submitted that the six defendants who were parties to the action in the District Court ought to receive notice of this application for leave to appeal because they can be deemed as much opposite parties to the petitioners as are the three plaintiffs who have been cited by the petitioners. In other words any party to the original action who is shown to be interested in the decision of the appeal to the Privy Council must be deemed to be an opposite party, although he has not been made a party to the appeal. Counsel for the petitioners has rejoined that the District Judge stated in his judgment that these six defendants had renounced any rights they may have had, and that they did not appeal against that decision, and he pointed out that the judgment of Fernando A.J. allowed the appeal only so far as it concerned the plaintiffs and that there was nothing in the judgment that implied that he intended to admit any rights in the six defendants. Counsel for the plaintiffs, however, says that he did at the hearing of the appeal expose the error made by the

learned District Judge in respect of this alleged renunciation and that the judgment of Fernando A.J. necessarily implies a finding allotting their share to the six defendants. It is certainly singular that the six defendants themselves should have taken no steps to correct the alleged error of the District Judge, and that the judgment in the appeal should have omitted any mention at all of this question of renunciation. But whatever the true facts may be on this point, the question of the obligation on the part of the petitioners to make the six defendants opposite parties is, in my opinion, completely disposed of by the fact that the six defendants cannot be said to be interested in the result of the appeal to the Privy Council. If they actually did renounce their rights, then obviously they indicated that they had no interest in the matter and abandoned any claim they might have to a share of the property. If on the other hand they did not renounce their rights, then, on the assumption that the judgment of the Supreme Court purported to establish those rights, the petitioners, by not making them opposite parties, must be taken to concede their claim, and if the petitioners succeed in appeal against the plaintiffs that cannot make any difference to the rights of the six defendants' shares in the property, as their shares can in no way depend upon the shares of the plaintiffs. It is a fallacy to assume that because the petitioners claim the whole of the property they must perforce get judgment for the whole of it as against parties whose rights have been admitted by a non-citation. I would therefore grant leave to appeal on the usual conditions.

HEARNE J.—I agree.

Application allowed.