1946 *Present :* **Keuneman S.P.J. and Jayetileke J.**

MACKEEN *et al.*, Appellants, *and* PULLE *et al.*, Respondents.

28 (Inty.)—D. C. Kandy, 162.

Partition action—Administrator of a deceased person's estate a party defendant—Right of heirs to intervene after interlocutory decree has been entered—Civil Procedure Code, s. 472.

Section 472 of the Civil Procedure Code is applicable to proceedings under the Partition Ordinance, and an interlocutory decree entered against the administrator would be binding on the heirs as well. If, however, after interlocutory decree has been entered, the heirs seek to intervene on the ground that the administrator had fully administered the estate before the date of action the burden is upon them to prove that fact.

APPEAL against an order of the District Judge of Kandy.

N. Nadarajah, K.C. (with him *H. W. Thambiah* and *S. R. Wijayatilake*), for the intervenients, appellants.

N. E. Weerasooria, K.C. (with him *C. E. S. Perera*), for the plaintiff, respondent.

[1] *(1945) 46 N. L. R. 126.*

October 10, 1946. KEUNEMAN S.P.J.—

In this case the heirs of one Jainudeen sought to intervene in the partition case after the interlocutory decree had been entered. Objection was taken by the plaintiff that the interlocutory decree was binding on the appellants because the administrator of Jainudeen's estate was a party to the earlier proceedings and to the interlocutory decree.

In appeal Mr. Nadarajah argued first that the administrator was not a proper party to this partition action and that the heirs of Jainudeen were the proper parties to the action. I cannot accept this argument. In my opinion section 472 of the Civil Procedure Code is applicable to proceedings under the Partition Ordinance. I do not think it is necessary to discuss the earlier authorities on this point. Under section 472 the administrator appears to be the proper party to the proceedings rather than the heirs although the heirs may in the discretion of the Judge be brought in as parties to the action also.

A further point is urged by Mr. Nadarajah that in this case the administrator, who was in point of fact the 1st defendant in the case, was *functus officio* as administrator because he had completely and fully administered the estate, before the date of action. It had been proved by the production of letters of administration that the 1st defendant was in fact appointed as the administrator of the estate. The burden lay upon the appellant to prove that the administrator had fully administered the estate. This they did not succeed in doing and in substance the learned District Judge has so held. No doubt, if the administrator had fully administered the estate it would not be necessary to have him as a party to the proceedings, but where he has not fully administered the estate, I think it is clear that he would continue to represent the heirs of the deceased person and accordingly any decree entered against him would be binding on the heirs as well. In the circumstances I think this appeal must be dismissed with costs.

JAYETILEKE J.—I agree.

Appeal dismissed.