

1938

*Present: Poyser S.P.J. and Wijewardene J.***MOHAMED MUSTAPHA v. IBRAHIM ALIM.**

Application for leave to appeal in Kathi Court No. 130—Board of  
Kathis Court No. 67 (206).

*Muslim Marriage Registration Ordinance, No. 27 of 1929, Schedule III.,  
part 2, s. 13 (1)—Application for leave to appeal—Right of respondent  
to be heard.*

In an application for leave to appeal to the Supreme Court under  
section 13 (1) of Part 2 of Third Schedule to the Muslim Marriage and  
Divorce Registration, the respondent is entitled to be heard in opposition.

**T**HIS was an application for leave to appeal from an order of the  
Board of Kathis.

L. A. Rajapakse (with him M. M. I. Kariapper), for petitioner.

N. E. Weerasooria, K.C. (with him S. A. Marikar), for the respondent.

*Cur. adv. vult.*

October 12, 1938. POYSER S.P.J.—

This was an application under section 13 (1) of Part<sup>2</sup> of the Third Schedule to Ordinance No. 27 of 1929, for leave to appeal from an order made by the Board of Kathis. It came before Koch J. on June 21 last, and he referred it to a Bench of two Judges. The question he referred was whether the respondent could claim to be heard in opposition to the application, the petitioner contending that the application should be disposed of *ex parte*. Koch J. pointed out that the phraseology of section 13 (1) was confusing. There is no doubt that it is. The section provides that a husband or wife who is aggrieved by the decision of the Board of Kathis may within one month of the communication of such decision apply to the Supreme Court for leave to appeal and shall give the opposite party notice of such application. The latter part of the section provides that the Supreme Court may grant leave to appeal and also gives the Supreme Court power to fix the payment of costs payable in the event of the appellant not obtaining leave to appeal or not succeeding in his appeal. It is not quite clear from this section whether the application for leave to appeal should be heard *ex parte* or not. The matter, however, is I think put beyond all doubt by the words of section 18 of the Ordinance which is as follows:—"It shall be lawful for the Judge of the Supreme Court or any three of them, of whom the Chief Justice shall be one, from time to time to make, subject to the approval of the Governor in Executive Council, such general rules as them shall seem meet for regulating the mode of applying for leave to appeal and of prosecuting appeals from decisions and orders of the Board of Kathis and for regulating any matters relating to the costs of such applications for leave to appeal and of appeals". The power given by this section to the Supreme Court to frame rules in regard *inter alia* to the costs of applications for leave to appeal and of appeals seems to indicate beyond all doubt that a respondent may, if he so desire, appear for an application for leave to appeal and if such application is refused the Supreme Court have the power to award costs. Apart from these provisions of the Ordinance, I think the general principle of law *audi alteram partem* must be applied. The application for leave to appeal to which the respondent was made a party is a matter which may be prejudicial to him. He has obtained a decision in his favour and the suspension of the operation of such decision which the granting of this application would effect would prejudice him.

We have been referred to various sections of the Civil Procedure Code and rules regulating appeals to the Privy Council and also the Ordinance which regulates appeals from the Courts of Requests. It will be noticed that under this latter Ordinance a statutory provision is made for an *ex parte* application for leave to appeal. In the absence of such clear statutory direction, any party on an application affecting him is entitled to be heard.

We accordingly order that the respondent may be heard at the hearing of this application which will be listed for hearing in due course. Costs will abide the final result of the appeal.

I would add that, as stated before, section 13 (1) of Part 2 of the Third Schedule to the Ordinance is not altogether clear and it would appear desirable that the Supreme Court should at an early date frame rules in regard to applications for leave to appeal and for appeals.

WIJEWARDENE J.—I agree.

