

1954 *Present* : Gratiaen A.C.J. and Gunasekara J.

ATTORNEY-GENERAL, Appellant, and V. RAMASWAMI
IYENGAR *et al.* (Administrators of the Estate of R. A. A. R.
Arunachalam Chettiar, Deceased), Respondents

*S. C. 483 and 484—Applications for Conditional Leave to appeal under
the Appeals (Privy Council) Ordinance in S. C. Nos. 235 and 236
of 1951*

*Privy Council—Conditional leave to appeal—Estate Duty Ordinance, ss. 40, 43—
Assessee's appeal to Supreme Court—"Civil suit or action"—Appeals (Privy
Council) Ordinance (Cap. 85), s. 3.*

A final judgment pronounced by the Supreme Court in an assessee's appeal under section 43 of the Estate Duty Ordinance is a judgment in "a civil suit or action" within the meaning of section 3 of the Appeals (Privy Council) Ordinance. Appeal lies, therefore, as of right to the Privy Council if the matter in dispute on the appeal is of the required value.

APPLICATIONS for conditional leave to appeal to the Privy Council.

Walter Jayawardena, Crown Counsel, with *G. F. Sethukavalur*, Crown Counsel, for the Attorney-General.

H. V. Perera, Q.C., with *S. J. V. Chelvanayakam*, Q.C., and *S. Sharvananda*, for the respondents.

Cur. adv. vult.

February 18, 1954. GRATIAEN A.C.J.—

The Crown has applied for leave to appeal to Her Majesty in Council against two judgments of this Court pronounced on 12th October 1953. In one case, the judgment affirmed a decree of the District Court of Colombo (passed under section 40 of the Estate Duty Ordinance) directing the Crown to refund to the respondents a sum of Rs. 214,085·19 (together with interest) representing an amount wrongly levied by the revenue authorities upon an assessment of estate duty. In the other case, the judgment set aside a decree in favour of the Crown in connected proceedings and substituted a decree directing the Crown to refund to the respondents (together with interest) a sum of Rs. 700,402·65.

The applications were resisted on the ground that, in the respondents' submission, neither judgment had been pronounced in "a civil suit or action" within the meaning of section 3 of the Appeals (Privy Council) Ordinance (Cap. 85). In my opinion there is no substance in this objection.

We were referred to earlier rulings of this Court to the effect that a judgment in Insolvency proceedings could not be regarded, for the purposes of an application for leave to appeal to the Privy Council, as having been pronounced in "a civil suit or action"—*In re Ledward*¹, *In re Keppel Jones*², *In re De Vos*³, and *Sockalingam Chetty v. Manikam*⁴. In the most recent of these authorities, Driberg J. pointed out that *Ledward's case* (*supra*) was a binding decision of a Collective Court. I respectfully agree that, as far as *Insolvency proceedings* are concerned, it is not permissible to question the correctness of the ruling in *Ledward's case*. On the other hand, the very brief judgment of the Collective Court makes it impossible to ascertain precisely the grounds of that decision. It would therefore be unsafe to attribute to it a *ratio decidendi* capable of application or legitimate extension to judgments of the Courts exercising jurisdiction under other statutory enactments.

There is no right of appeal to the Privy Council from a judgment of this Court on a case stated under the Housing and Town Improvement Ordinance—*Soertsz v. Colombo Municipal Council*⁵, *Sangarapillai v. Chairman, C. M. C.*⁶ Similarly, with regard to a judgment on a case

¹ (1859) 3 Lor. 234.

² (1877) Ram. 379.

³ (1899) 3 Br. 331.

⁴ (1930) 32 N. L. R. 65.

⁵ (1930) 32 N. L. R. 62.

⁶ (1930) 32 N. L. R. 92.

stated under the Income Tax Ordinance (i.e., before that Ordinance was recently amended to meet the difficulty). *R. M. A. R. A. R. R. M. v. The Commissioner of Income Tax*¹. The principle is clear enough. When a Court exercises jurisdiction which is "merely consultative in character", or makes a determination in the nature of an "award" in proceedings "which from beginning to end were ostensibly and actually arbitration proceedings", its decision cannot be equated to a judgment pronounced in "a civil suit or action"—*Rangoon Botatoung Co. v. Collector, Rangoon*², *Secretary of State for India v. Chelkani Rama Rao*³, *Tata Iron Steel Co. v. Chief Revenue Authority, Bombay*⁴.

The functions exercised by the Court under the Estate Duty Ordinance must now be considered. An assessee "appeals" from the Commissioner's determination to the appropriate District Court, and his appeal "shall be deemed to be and may be proceeded with as an action between the appellant as plaintiff and the Crown as defendant" (section 40). The District Judge's decision is reached after trial on the issues which properly arise, and a decree is duly passed which may *inter alia* direct one party or the other to make a payment in accordance with the determination of the correct amount of duty payable under the Ordinance. A further appeal lies to this Court against "any decree or order" so made (section 43), and this Court is then empowered to enter a money decree in conformity with its decision on the appeal. At every stage, therefore, the characteristic features of a litigation in regular civil proceedings before a Court of record are prominently observed: the prayer for relief against an alleged wrong; the *litis contestatio*; the framing of issues in order to clarify the nature of the dispute; the hearing of evidence; and then the Court's determination followed by the passing of an effective decree granting or refusing, wholly or in part, the relief asked for; eventually, the hearing of an appeal (if one is preferred by the party aggrieved) to a superior Court of record which may affirm, vary or modify the original decree. If the "final judgment" pronounced on such an appeal is not a judgment in "a civil suit or action" within the meaning of the Appeals (Privy Council) Ordinance, I really do not know what contrary description it can accurately be said to attract.

In the past, the statutory right of appeal to the Privy Council in estate duty cases (the other requirements being also satisfied) has never been questioned. I concede that "mere assumptions *sub silentio* are not to be taken as authoritative" and should not be followed if they are manifestly wrong; *Allen: Law in the Making* (5th Ed.) p. 312. But in this context the "assumption" is not based on error, and is justified by a ruling of the Judicial Committee of the Privy Council in *Commissioner of Stamps, Straits Settlements v. Oei Tjong Suang*⁵ which is precisely in point. It was there held that a decision of the Court of Appeal of the Straits Settlements exercising jurisdiction in an estate duty case (under a colonial enactment based, like our local Ordinance, on the Finance Act,

¹ (1935) 37 N. L. R. 447.

² (1912) L. R. 39 I. A. 197.

³ (1916) L. R. 43 I. A. 192 at 193.

⁴ (1923) L. R. 50 I. A. 212.

⁵ (1933) A. C. 378 at 399.

1894 of England) was “ *not a mere award of an administrative character but a judgment or determination made by the Court in a civil cause* ” so that an appeal lay as of right to the Privy Council under the Colonial Charter.

I would therefore allow the applications of the Crown subject to the usual conditions which apply to cases in which the Crown is petitioner. The respondents must pay the costs of the argument in each application.

GUNASEKARA J.—I agree.

Applications allowed.

