Even allowing for this erroneous consideration in assessing the damages and reducing them on that account, I cannot think that the high figure can have been due to that only and think that there must also be some other error in principle.

I would allow the appeal and reduce the damages to £100, being £75 for assault and £25 for false imprisonment, which figures allow for the fact that the learned judge took a serious view of the incident.

[COURT OF APPEAL]

Freetown
Nov. 12, 1962

Ames Ag.P., Bankole Jones Ag.C.J., Dove-Edwin J.A.

BABADI JALLOH . . . . *Appellant*

v.

HENRY BECKLEY . . . . *Respondent*
(Police Sergeant 225)

[Civil Appeal 12/62]

Tort—Action against public officer—Public officer defended by Crown Law Officer—Fees of court—Whether fees "payable by Government"—Supreme Court Rules, Ord. 51, r. 2—Whether opposing party can raise issue of party's failure to pay fee.

In September, 1961, appellant (a diamond dealer) sued respondent (a police sergeant) for conversion of two diamonds. On October 9, respondent entered an appearance, and notice thereof was given to appellant. The memorandum and notice were signed: "D. M. A. Macaulay, Acting Senior Crown Counsel and Solicitor for Defendant." The defence was signed and filed by D. M. A. Macaulay, "Acting Senior Crown Counsel, Crown Law Office, Bo." No fees were paid for the entry of appearance or for filing the defence. On March 29, 1962, plaintiff's solicitors took out a summons for an order that "the appearance entered and the defence filed be set aside for irregularity and be taken off the file on the ground that no fees have been paid for filing the said documents in breach of Order 51, r. 1. . . ."

Order 51, r. 1 (1), of the Supreme Court Rules provides: "The fees . . . contained in Appendix B hereto are fixed and appointed to be and shall be taken in the court . . . and by any officer, paid wholly or partly out of the public moneys, who is attached to the court."

Rule 2 provides: "No fees . . . shall be taken in respect of any proceedings where such fee . . . would but for the provisions of this rule be payable by Government. . . ."

The Supreme Court (Cole J.) held that the fees were "payable by Government" and, therefore, came within the exemption provided by rule 2.

Held, dismissing the appeal, that the opposing party cannot challenge a proceeding on the ground that a party has not paid the correct court fee.

The court (Ames Ag.P.) said, obiter, that the fees in the instant case did not come within the exemption provided by rule 2.

Berthan Macaulay for the appellant.
John H. Smythe (Acting Solicitor-General) for the respondent.

AMES AG.P. In September, 1961, the appellant, who is a licensed diamond dealer, issued a writ against the respondent, who is a police sergeant, claiming for conversion of two diamond stones valued at £295.

On October 9, 1961, the respondent entered an appearance and notice thereof was given to the appellant. The memorandum and the notice were signed " D. M. A. Macaulay, Acting Senior Crown Counsel and Solicitor for Defendant."

Pleadings were then filed. It is not necessary to set them out. It is sufficient to say that the appellant averred that while on a visit to Bo, for the purpose of selling diamonds, he was arrested by the respondent, taken to the police station, and that his diamonds were taken away from him and that later two diamonds were no longer there and in their stead were two false stones. The defence denied all this and averred that the appellant " was invited to Bo Police Station for investigation " (what of is not mentioned), and that the diamonds and the two false stones which were returned to him were exactly those which had been " handed " by him to the police.

The defence was signed and filed by D. M. A. Macaulay, " Acting Senior Crown Counsel, Crown Law Office, Bo."

No fees were paid for the entry of appearance or for filing the defence. This fact had come to the notice of the solicitors for the plaintiff by March 3, 1962, and on that day they sent a registered letter to the solicitor for the defendant drawing his attention to the omissions.

No reply was received and so on March 29 they took out a summons for an order that " the appearance entered and the defence filed be set aside for irregularity and be taken off the file on the ground that no fees have been paid for filing the said documents in breach of Order 51, r. 1. . . ."

The relevant part of that rule is:

> " 1. (i) The fees . . . contained in Appendix B hereto are fixed and appointed to be and shall be taken in the court . . . and by any officer, paid wholly or partly out of the public moneys, who is attached to the court."

This rule appears to be mandatory, and to be addressed to the officers of the court and to put the onus on them to collect and not on the litigant to pay.

The defendant pleaded that he was exempt under the next rule of that Order, of which the relevant part is:

> " 2. No fees . . . shall be taken in respect of any proceedings where such fee . . . would but for the provisions of this rule be payable by Government: . . ."

So the problem can be put like this. If a public officer is sued in tort, and the Crown Law Officers take up cudgels on his behalf and act as his solicitor, are the fees of court, which he would otherwise have had to pay, fees " payable by Government " within the meaning of rule 2? The learned judge who heard the summons held that they are. His reasons were (he is referring to rule 2):

> " This rule, in my view, means that in any proceeding where the Government is responsible for payment of the fees or percentages contained in Schedule B to the Supreme Court Rules or has either expressly or impliedly undertaken such obligation in respect of any proceeding then no such fees or percentages should be taken. The proviso to the rule does not, in my view, affect my interpretation. What is the evidence in support of this view? According to the appearance entered herein it is clearly shown that the

appearance was being entered for the defendant/respondent by one of the lawful agents of the Attorney-General, who is the constitutional legal adviser to the Government of Sierra Leone; namely, the then acting senior Crown counsel. It appears from this that the Government, through one of its constitutional agents, was thereby giving notice to the world, including the plaintiff/applicant, that it was taking over the conduct of the defence and a fortiori undertaking the obligation of payment of all fees required to be paid by the Supreme Court Rules in respect of the proceeding."

With all respect I do not agree. Ordinarily fees are payable by the party to the litigation. If a defendant has a solicitor (not a Crown Law Officer) and the solicitor files a defence and hands over, as he must, the fee required by the cashier of the court (whether he does so as an advance to his client or in reduction of an amount deposited by the client with the solicitor for the costs of the litigation), is the solicitor giving notice to all the world and to the other party that he is taking over the defence and undertaking the obligation of payment of all fees? I think not. Solicitors are not under any legal obligation to pay the fees for a client who does not keep them supplied with the requisite funds. I see no reason why the rule should mean something different if the solicitor is a Crown Law Officer.

I do not think that the wording of the rule is sufficiently wide to extend the exemption to a case such as this one. Ought, therefore, the appellant's summons to have succeeded? In my opinion, no, it ought not to have (as indeed it did not).

It is admitted that it is the practice in the court not to collect fees in cases such as this, and that, no doubt, is why the cashier did not "take" any fee in this case. It seems to me to be a matter of court revenue and nothing more. I have already pointed out that the rule is directed to the officer of the court who "takes" the fees. If he takes the wrong fee, the party could not be penalised to the extent of having the proceeding set aside. Sometimes it is doubtful under which item of the Schedule a fee should be assessed. I have, in my day, when judge in a court of first instance, been consulted at times by the cashier or registrar as to the proper item under which to charge a fee. I mention this to indicate that the onus of seeing that the proper fee is paid is on the officer of the court, and the party must pay accordingly. I see no difference where the officer of the court decides that no fee is payable in the particular instance. It may be that a mistake or misinterpretation could be adjusted afterwards, or the matter brought before a judge by a party who thinks he is required to pay too much or too little. But I think that it certainly would be a great injustice to hold that a proceeding was of no effect and should be struck out at the instance of the opposite party where the party has paid what he was required to pay or paid nothing where he was required to pay nothing.

I would dismiss this appeal.

BANKOLE JONES AG.C.J. I also agree that this appeal should be dismissed for the reasons given above.

DOVE-EDWIN J.A. I agree. It has always been my view that the type of fees referred to in this matter is one for the officer of the court. For the plaintiff to apply to have the appearance and defence filed set aside for irregularity is wrong. In my humble view it is nothing to do with him.

I agree that this appeal be dismissed.

Freetown
Nov. 14
1962

Ames Ag.P.
Dove-Edwin J.A.,
R. B. Marke P.J.

[COURT OF APPEAL]

TAMBA S. M'BRIWA . . . . *Petitioner/Appellant*

v.

DUDU B. BONA . . . . *Respondent/Respondent*

[Civil Appeal 21/62]

Election Petition—Service of notice of presentation of petition—Service on respondent's solicitor and agent—Notice of appointment of agent prepared by respondent's solicitor—Whether petitioner gave sufficient "notice of the presentation of a petition"—Whether affidavit filed "immediately after" notice of presentation of petition—House of Representatives Election Petition Rules (Laws of Sierra Leone, 1960, *Vol. VI, p.* 407), *rr.* 11, 12, 15, 16, 17, 19, 20—*Electoral Provisions Act,* 1962 (*No.* 14 *of* 1962).

Petitioner filed an election petition on June 12, 1962. On June 22, respondent filed a notice of his appointment of an agent pursuant to rule 11 of the House of Representatives Election Petition Rules. The agent appointed was Mr. Khan, respondent's solicitor, who prepared the notice of appointment. On the same day, petitioner served on Mr. Khan's clerk a copy of the petition, a notice of motion for order for security for costs, a notice of appointment of petitioner's agent and the appointment of petitioner's agent. On June 28, petitioner filed a notice of motion for an order under rule 16 of the House of Representatives Election Petition Rules "that what has been done shall be considered sufficient service." On June 29, Mr. Khan filed a notice of his appointment as respondent's agent, and he also told petitioner's solicitor that he had accepted service of the petition and requested him to withdraw his application for an order under rule 16. On July 3, petitioner filed an affidavit stating that "the above-entitled petition and other papers connected therewith" had been served on Mr. Khan's clerk. On July 6, the application for an order under rule 16 was withdrawn.

On the application of respondent, the Supreme Court (Bankole Jones Ag.C.J.) ordered that the petition be struck out on the ground that rules 15 and 19 of the House of Representatives Election Petition Rules had not been complied with. Petitioner appealed.

Held, allowing the appeal, (1) that, in view of the fact that Mr. Khan prepared the notice of his appointment as respondent's agent which was filed on June 22, he could not be allowed to assert that he was not such agent on that day, even though his notice under rule 12 of the House of Representatives Election Petition Rules was not filed until June 29.

(2) That, in view of the fact that there is no prescribed form of notice under rule 15 and that "the rule no longer fits the present shape of the law as to election petitions," petitioner's service of the documents which he served on respondent constituted sufficient compliance with rule 15; and

(3) That, in the circumstances of this case, petitioner complied with rule 19 by filing the affidavit of service on July 3.

Case referred to: *H. M. Kanagbo and others* v. *M. J. Kamanda Bongay*, Sierra Leone Court of Appeal, July 27, 1962 (Civil Appeal 14/62).

John E. R. Candappa for the appellant.

Zinenool L. Khan for the respondent.

AMES AG.P. This is another appeal arising out of an election petition. The petition was struck out, on the application of the respondent, on the ground that rules 15 and 19 had not been complied with.

Rule 15 is:

> " Notice of the presentation of a petition and of the nature of the proposed security as hereafter provided for in rule 20, accompanied by a copy of the petition, shall be served by the petitioner on the respondent within ten days after such presentation, exclusive of the day of presentation."

Two things have to be considered. When service was effected, and what was served.

The petition was filed on June 12. So the ten days expired on the 22nd. On July 3, the petitioner filed an affidavit, the paragraphs of which read:

> " 1. That I am a clerk in the office of Mr. J. E. R. Candappa, of 3, Trelawney Street, Freetown, solicitor for the petitioner.
>
> " 2. That on June 22, 1962, I personally served on Yamba Koroma, clerk to Mr. Z. L. Khan, solicitor and agent for the respondent, the above-entitled petition and other papers connected therewith."

The respondent filed a notice of his appointment of an agent, under rule 11, on that very day, the 22nd. The agent was Mr. Khan, the solicitor for the respondent. The notice which was filed was prepared in Mr. Khan's office, and is indorsed " Zinenool L. Khan, 23, Rawdon Street, Freetown, Solicitor and Agent for the Respondent."

Mr. Khan did not file the notice of his appointment, required by rule 12, until June 29. Therefore, so he has argued before us, he was not the agent until the 29th, and, therefore, the service on the 22nd was of no effect, and service of the 22nd on his clerk can only reckon as service on the 29th, and so was out of time. Personal service on the respondent was not effected at any time. The argument might have had something in it if the respondent's notification under rule 11 of the appointment had been prepared and filed by the respondent without Mr. Khan's knowledge (in which case it may be doubted whether service on his clerk, even in time, would have been effective service). But can Mr. Khan be allowed to assert that he was not the agent on the 22nd when he himself wrote and filed the respondent's notification of his appointment and described himself on the indorsement as both solicitor and agent of the respondent? In my opinion, he cannot be heard to say so.

The next thing to consider is what was served. The rule says " notice of presentation of the petition and of the nature of the proposed security " and a copy of the petition. The affidavit set out above said that " the above-entitled petition and other papers connected therewith " were served. " Other papers connected therewith " is not self-explanatory, which the affidavit should have been. The petitioner's solicitor seems to have realised that, and on August 10 he filed another affidavit, explaining that what was served was a copy of the petition, notice of motion for order for security of costs, notice of appointment of petitioner's agent and the appointment of petitioner's agent. (Everything except the notice of presentation, one might say.)

I think that rule 15 contemplates a document when it says " notice of presentation " but no form is prescribed. So it could be any form of document which gives notice of presentation. It does not require the date of presentation to be stated, which I should have expected it or a prescribed form to do. The words " and of the nature of the proposed security as hereinafter

provided for" mean nothing since the Electoral Provisions Act, 1962 (No. 14 of 1962). That Act makes other arrangements about security and revokes rule 20 by implication. Yet the Act provides in its section 62 (2) that until other rules are made (and none have been made) the previously existing rules shall apply "with any necessary modifications and adaptations." How is rule 15 to be modified and adapted to make sense now? The petitioner thought (apparently) it should be read as requiring that notice of motion for an order as to security should nowadays be served on the respondent. One must agree that that is sensible (and other petitioners have thought the same, so I find from other appeals which have come before this court).

The question seems to me to boil down to this. Remembering that there is no prescribed form of notice, and that the rule no longer fits the present shape of the law as to election petitions, was it sufficient compliance with the rule to have served upon the respondent the documents which were served upon him? I think it may reasonably be so considered, and having said that I might add that it is to be hoped that the rule will be amended to make it less embarrassing to petitioners, the legal practitioners and the courts alike.

I now come to rule 19. It is:

> "The petitioner or his agent shall, immediately after notice of the presentation of a petition shall have been served, file with the master an affidavit of the time and manner of service thereof."

In the recent appeal of *H. M. Kanagbo and Others* v. *M. J. Kamanda Bongay*, decided on July 27, 1962 (Civil Appeal No. 14/1962), this court held that this rule is obligatory and means what it says, and that "immediately after" means immediately after in the circumstances of the case.

Now what happened here? Service was effected in Freetown on the clerk of the solicitor of the respondent on June 22. The affidavit relied on by the petition is the same affidavit of which I have set out above its two paragraphs. It was filed on July 3 by the petitioner's solicitor, whose office is also in Freetown. That hardly suggests "immediately after." But there is something more to it than that. At no time was personal service able to be effected on the respondent. It had been attempted within the prescribed period by means of the Master's Office and the sheriff. (Whether or not that can be done was not argued.) As I have said, service on Mr. Khan's clerk was effected on June 22: but Mr. Khan had not filed his notice of appointment by the 28th and on that day the petitioner filed a notice of motion for an order under rule 16 "that all reasonable effort has been made to effect personal service and cause the matter to come to the knowledge of the respondent . . . that what has been done shall be considered sufficient service" and that notice be posted up in the office of the master as required by rule 17.

The application was fixed for hearing on July 6. On June 29, Mr. Khan's notice of appointment was filed: and on the same day he told the petitioner's solicitor that he had accepted service of the petition and requested him to withdraw his application for an order under rule 16, and on the same day also he filed an entry of appearance for the respondent, a step which has no relevance to an election petition. June 30 was a Saturday. July 1 was a Sunday. The affidavit was filed on the 3rd as stated, and on the 6th, when the application came on for hearing, it was not proceeded with but was withdrawn.

In my opinion, in these circumstances, the filing of the affidavit of service may be held reasonably to have complied with rule 19.

The appeal in *Kanagbo* v. *Bongay*, mentioned above, was determined on July 27, and on July 31 the respondent filed his application to strike out the petition.

I would allow the appeal and set aside the order striking it out.

[COURT OF APPEAL]

Freetown
Nov. 14,
1962

Ames Ag.P.,
Dove-Edwin J.A.,
Marke P.J.

IN THE MATTER OF THE COMPANIES ACT IN THE MATTER OF THE GOLD COAST PROPERTY COMPANY LTD.

AND

IN THE MATTER OF CERTAIN LEASES AT KISSY BY-PASS ROAD, KISSY VILLAGE, HEREDITAMENTS ISSUED BY B. L. MACFOY

[Civil Appeal 25/62]

Practice—Appeal—Whether appeal properly before court—Whether judgment appealed from final or interlocutory.

Respondent applied to have certain leases rescinded. The Supreme Court (Bankole Jones Ag.C.J.) ordered that the leases be rescinded, and also ordered appellant to pay certain rents and rates to respondent. The judge said, "I order the master and registrar to hold an inquiry as to the amount of rents and rates due the applicant and report to this court his findings. . . . The applicant is to have the taxed costs of these proceedings, including the costs to be incurred at the inquiry before the master and registrar. The matter is adjourned, pending the master's report, to June 8 for mention."

Appellant filed an appeal from this judgment before the inquiry before the master and registrar had been held. Respondent raised a preliminary objection to the hearing of the appeal on the ground that the judgment was not final and, therefore, could not be appealed from without leave from the judge.

Held, striking out the appeal, that where a judge, after awarding a judgment which is indeterminate in amount, orders certain inquiries to be held and adjourns the action for the master to report his findings to the court, such a judgment is interlocutory and not final.

Cases referred to: *Blakey* v. *Latham* (1890) 43 Ch.D. 23; *Blay and others* v. *Solomon* (1947) 12 W.A.C.A. 175; *Ababio and another* v. *Turkson* (1950) 13 W.A.C.A. 35; *In re Faithfull, Ex parte Moore* (1885) 14 Q.B.D. 627; 54 L.J.Q.B. 190; *Bozson* v. *Altrincham Urban District Council* [1903] 1 K.B. 547; 72 L.J.K.B. 271; 19 T.L.R. 266.

Rowland E. A. Harding for the appellants.
Cyrus Rogers-Wright for the respondent.

MARKE P.J. Mr. Wright has raised a preliminary objection on the ground that—

"The appeal is not properly before the court, the appellant not having obtained the leave of the judge to appeal from his order; and the order, having been adjourned to a date to be mentioned, was not final."

Mr. Wright, in his argument, has referred us to the judgment of the learned trial judge and particularly to pages 75 and 76, where the following appears:

> "It follows from this review of the facts and on the authorities that the applicant is entitled to a rescission of the two leases because of the several breaches of convenants committed by the lessees and issued above. I therefore order their rescission for the remainder of their respective terms. On the question of rents I order the lessees or their attorney to pay all rents due as from March 1, 1960, to May 20, 1962, at the rate of £72 per annum in respect of the first lease dated April 27, 1955, and as to the second lease dated August 1, 1956, I order the lessees or their attorney to pay all rents due as from the quarter beginning February 1, 1959, to May 29, 1962, at £120 per annum. On the question of rates I order the lessees or their attorney to pay the applicant all rates found due and payable which had been so paid or ought to have been paid by the applicant to the appropriate local authority I order the master and registrar to hold an inquiry as to the amount of rents and rates due the applicant and to report to this court his findings."

After awarding certain damages in respect of the lessees' breaches on both leases the judgment went on:

> "The applicant is to have the taxed costs of these proceedings, including the costs to be incurred at the inquiry before the master and registrar. The matter is adjourned, pending the master's report, to June 8 for mention."

Mr. Wright informed the court that as the appellants had filed this appeal before the master could hold the inquiry directed by the court the inquiry has not yet been held, that because an inquiry has yet to be held in compliance with the judge's order the judgment was therefore interlocutory and not final, and has referred us to *Blakey* v. *Latham* (1890) 43 Ch.D. 23.

The facts in this case may be summarised as follows: The plaintiff, having had his action against the defendant dismissed with costs, moved for liberty to set off against the costs payable to the defendant in that action certain costs payable to the plaintiff partly in that action and partly in another action between the same parties. One, Green, claimed a lien upon these costs for his costs as the defendant's solicitor in the first-mentioned action. The court made an order declaring that the plaintiff was entitled to set off against the costs he was to pay the defendant the costs of two motions but subject as regards the costs on the second motion to the lien (if any) which the taxing master should find Green to have as solicitor for London, who was formerly a partner of Latham.

Green appealed from this order but did not serve his notice of appeal until more than 21 days from the passing of the order.

On the question whether the order appealed from was final or interlocutory Cotton L.J. said:

> "Any order, in my opinion, which does not deal with the final rights of the parties but merely directs how the declarations of right already given in the final judgment are to be worked out is interlocutory, just as an order made before judgment is interlocutory where it gives no final decision on the matters in dispute but merely directs how the parties are to proceed in order to obtain that final decision."

Fry C.J., in the same case, said:

> "... but of this I am clear—that where a final judgment has been pronounced in an action, and subsequently an order has been obtained for the purpose of working out the rights given by the final judgment, that order has always been deemed and rightly deemed interlocutory. This is such an order...."

Mr. Harding argued that the judgment was a final one and referred to *Blay and ors.* v. *Solomon* (1947) 12 W.A.C.A. 175 and *Ababio and anr.* v. *Turkson* (1950) 13 W.A.C.A. 35.

In *Blay and ors.* v. *Solomon* the headnote reads:

> "The respondent, as plaintiff, sued the appellants, as defendants, for possession of property, an account of rents and profits and partition or sale. The trial judge ordered that an account as between the respondent and the third appellant should be filed and that the property be sold by auction."

It was held by the West African Court of Appeal that for the reasons given in the decision this was an interlocutory decision, and, no special leave to appeal having been obtained pursuant to section 3 (3) of the West African Court of Appeal Ordinance, the appeal was not properly before the court.

From the judgment of the then President of the West African Court of Appeal, *Ababio and anr.* v. *Turkson* was an application to the West African Court of Appeal, under its rules for appeal to the Privy Council, to vary an order made by a single judge of appeal in which he refused conditional leave to appeal to the Privy Council on the ground that the judgment of the West African Court of Appeal was an interlocutory one to the extent that the successful plaintiff could not proceed to execution until the trial court determined the actual amount payable to the appellant. On the application coming before the full West African Court of Appeal the full court held as follows:

> "This court had decided that the applicant was entitled to an account, and that all the court below had to do was to ascertain the amount payable. The judgment was, therefore, a final judgment and unconditional leave to appeal was granted."

The President of the West African Court of Appeal in his judgment was influenced by a Privy Council decision in an Indian case, *Rahimboy* v. *Turner*, which was taken, it appears, not from a law report, whether Indian or British, but from a book entitled Court Procedure in British India, and in the absence of a law report on that Indian case we are deprived of an opportunity of saying what was the ratio decidendi of their lordships in the Privy Council.

The President of the West African Court of Appeal, in *Ababio and anr.* v. *Turkson*, said at p. 36:

> "I pause to observe that in the present case this court decided that the appellant was entitled to an account and that all that the court below had to do was to ascertain the amount due in accordance with the terms of the certificate of the Governor in Council."

Coussey J., in the same case, said that it was only left to the court below to work out what the applicant was entitled to by arithmetical calculation.

If the West African Court of Appeal was by this case laying down a general principle for deciding what was a final judgment, it would mean that where a plaintiff, say, in a case of negligence, signed judgment in default of defence

with damages to be assessed, that judgment would, before the damages had been assessed, be a final judgment and not merely interlocutory, as has been held by judges for a long time. I cannot feel that the West African Court of Appeal in *Ababio and anr.* v. *Turkson* intended to lay down such a general test for judgments which are final and interlocutory but that that case was decided on the particular facts before the court.

In re Faithfull, Ex parte Moore (1885) 14 Q.B.D. 627, which was cited by the President in his judgment, does not support the conclusion arrived at in *Ababio and anr.* v. *Turkson*, and there was no attempt in the judgments delivered to distinguish it from the *Ababio* case.

In *In re Faithfull, Ex parte Moore* Brett M.R. said:

> "If the court ordered the result of the inquiries to be reported to itself before the judgment was given it would not be a final judgment."

It may perhaps be argued that since the West African Court of Appeal in *Ababio and anr.* v. *Turkson* had found that one of the parties on appeal before that court was liable to account and had sent the case to the Supreme Court to carry out—that is, to direct accounts to be taken—without further reference to the West African Court of Appeal, the judgment so far as the West African Court of Appeal was concerned was a final judgment, as the West African Court of Appeal then was finished with the matter.

However, it is clear from the report of *Ababio and anr.* v. *Turkson* that neither *Blay and ors.* v. *Solomon*, which had been decided by that court three years earlier, nor *Blakey* v. *Latham* was brought to the notice of the court, and also that *Blay and ors.* v. *Solomon*, decided by the West African Court of Appeal about three years before the *Ababio and anr.* v. *Turkson* case, was wrongly decided. The West African Court of Appeal was bound by its decisions and until an earlier decision of that court was held wrongly decided by a higher court, that is, by their lordships in the Privy Council, the earlier decision remains good and binding.

In the instant case, the court ordered the master to hold certain inquiries and then adjourned the action pending the master's report. Though it is true that the learned trial judge in his judgment had rescinded the leases, awarded damages, and even ordered costs of the action, in view of the learned judge adjourning the matter to a specified date, could it be said that he had finally disposed of this case? As pointed out by Lord Alverstone C.J. in *Bozson* v. *Altrincham Urban District Council* [1903] 1 K.B. 547, 548:

> "It seems to me that the real test for determining this question ought to be this: Does the judgment or order, as made, finally dispose of the rights of the parties?"

If the answer to that test as applied to the instant case were in the affirmative, then there would arise the difficulty of getting over the fact that, by reason of the order adjourning the case, the case was still pending before the court.

It seems to me that except for the judgment in *Ababio and anr.* v. *Turkson*, which I find was not laying down a general principle of the test to be applied in cases of this kind but related only to the particular circumstances of that case, it is clear that where the judge orders certain inquiries to be held and the action is adjourned for the master to report his findings to the court, such a judgment is interlocutory and not final.

In the circumstances I would uphold the preliminary objection.

AMES AG.P. I agree that the objection must be upheld. The decision in *Ababio and anr.* v. *Turkson* (1950) 13 W.A.C.A. 35 on which Mr. Harding relied seems to me not to be relevant. It was about a judgment of an appeal court. The appeal court had allowed an appeal and held that the appellant was entitled to some rents and royalties on mining leases (the court of first instance had held that he was not) and sent the case back to the court of first instance for it to ascertain the amount of the rents and royalties and enter judgment for the appellant for that amount. The appeal court was not going to enter any further judgment. As far as it was concerned the appeal had been determined and was at an end. The decision decided that for the purpose of appealing to the Privy Council, the appeal court's judgment was final and not interlocutory.

In the instant appeal, the question raised by the objection is quite different. It concerns the nature of a judgment of a court of first instance.

Its nature is seen easily if the judgment is paraphrased, which, I think, can be done quite fairly like this:

> "These leases must be rescinded and I do rescind them with effect from such-and-such a date. You are entitled to rent and rates from that date and I award them to you; but I cannot name the figure yet because, although I know the amount of the rents, there are other factors which I do not know. The master is to make an inquiry and ascertain what the figure should be and let me know. In the meantime I adjourn the case until such-and-such a date for mention, when I can be told what has been done or is being done."

In my opinion, such a judgment is interlocutory and not final.

DOVE-EDWIN J.A. I also agree that the objection must be upheld. At first sight I was of the opinion that it was a final judgment, but on further consideration I find that this opinion cannot be supported.

The relevant portion of the judgment reads as follows:

> "It follows from this review of the facts and on the authorities that the applicant is entitled to a rescission of the two leases because of the several breaches of covenants committed by the lessees and named above. I therefore order their rescission for the remainder of their respective terms. On the question of rents, I order the lessees or their attorney to pay all rents due as from March 1, 1960, to May 28, 1962, at the rate of £72 per annum in respect of the first lease dated April 27, 1955, and as to the second lease dated August 1, 1956, I order the lessees or their attorney to pay all rents due as from the quarter beginning February 1, 1959, to May 28, 1962, at £120 per annum. On the question of rates, I order the lessees or their attorney to pay to the applicant all rates found due and payable which have been so paid or ought to have been paid by the applicant to the appropriate local authority. I order the master and registrar to hold an inquiry as to the amount of rents and rates due the applicant and report to this court his findings."

Until the master and registrar has held the inquiry as to the amount of rents and rates due to the applicant and reports to the court his findings, that portion of the learned judge's judgment which reads: "I order the lessees or their