BETEA KRU and MATTHEW D. WOLO, Appellants, *v.* PENTI TARPEH, SR., J. N. DOE and A. B. DOE, Executors of the estate of C. B. Williams, Appellees.

APPEAL FROM THE MONTHLY AND PROBATE COURT, MONTSERRADO COUNTY.

Argued October 21, 1969. Decided January 29, 1970.

1. The pendency of another action over the same subject matter between the same parties, in another court, is ground for the dismissal of an action.
2. But when the other action relates only to the same subject matter when the parties are not identical, it is not a ground for dismissal.
3. An interlocutory judgment does not give rise to the right of appeal, which comes into being only in the case of a final judgment.
4. The controlling quality of a final judgment is that it puts an end to a suit or action.

In the course of a proceeding in the probate court, the judge held at the time the issues of law were presented for adjudication, that the matter was to be suspended pending the determination of another action in another court involving the identical subject matter but not the identical parties. The respondents in the probate court excepted to the ruling and announced their intention to appeal, not recognized by the lower court but nonetheless, pursued in accordance with statute. During the pendency of the appeal, the appellees moved to dismiss, contending that the decree of the court below was interlocutory in nature and not final, as judgments are required to be for appeals to be considered. The opinion of the Supreme Court rendered on the motion recognized the interlocutory nature of the decree appealed from, but pointed also to the statutory grounds for dismissal of appeals, in which it was not embraced. However, by stipulation of the parties, which the Court lent its sanction to, the *case* was *remanded* to the lower court *for adjudication,* after the decree was set aside, the subject matter of

the pending other action not being one involving the identical parties.

Matthew D. Wolo for appellants. *Edward N. Wolo* for appellees.

MR. CHIEF JUSTICE WILSON delivered the opinion of the court.

The record in this case reveals that on May 3, 1966, J. N. Doe, A. B. Doe and Penti Tarpeh, in their capacity as executors of the estate of C. B. Williams, filed in the office of the clerk of the probate court a caveat against the probation of any instrument of transfer in favor of Matthew D. Wolo, which might convey a portion of the aforesaid estate. On the very same day after the filing of the caveat, Matthew D. Wolo presented to the probate court for probation a warranty deed executed in his favor by B. T. Kru and Wissah Saryaneh. The caveators were duly informed of the presentation of said deed and on May 11, 1966, filed objections to the probation of the said warranty deed. Pleadings progressed as far as the reply and rested.

On April 9, 1968, the parties having been duly cited, appeared and argued the issues of law contained in the pleadings. Ruling was reserved until further notice. On May 5, 1968, the judge in ruling on the issues of law, held in paragraphs 4 and 5, as follows:

> "As much as we would like to pass upon the law issues as provided by statute and thereafter go into the merits and facts, we find ourselves incapable and unable to do so, primarily because objections in count three of their reply plead that an ejectment suit is filed in the Circuit Court, Sixth Judicial Circuit, Montserrado County, over the same parcel of land in question and also strongly argued this before court. Any attempt on our part to pass upon the law issues

and/or facts involved would surely have a prejudicial effect on the case itself and may have a tendency to inflame the mind of the court and jury.

"In view of the foregoing, we have no alternative but to suspend the entire proceedings until final determination of the ejectment suit. Costs of these proceedings to abide final determination of the matter."

Although our L. 1963–64, ch. III, Civil Procedure Law, § 1102(d), provides that the pendency of another action over the same cause in a court of Liberia is a ground for dismissal of an action, the statute specifically requires that the action must be between the same parties.

In the absence of any showing that there was such an action pending, we fail to see by what authority the court below acted, especially when appellants are not shown to be parties in any other action. More than this, had an action between the same parties herein been pending in the Circuit Court, we are of the opinion that this fact could not operate as a stay to a ruling on the issues of law.

The minutes reveal that respondents below, now appellants, excepted thereto and announced an appeal to this Court. To this announcement the court entered the following ruling:

"The exceptions are noted, and this not including the determination of the matter, but being an interlocutory ruling, the appeal is denied. Matter suspended."

The record further reveals that the respondents again gave notice that they would appeal and accordingly perfected an appeal to this Court on a bill of exceptions containing seven counts. When this case was reached on our trial docket and called for argument, we were informed by the Clerk that the appellees had filed a motion to dismiss the appeal on the ground that the decree appealed from was interlocutory in nature, and not final, as required to be appealable. Appellants opposed.

The question now arises whether the ruling or judg-

ment from which this appeal is taken is final or interlocutory. A final judgment is defined as:

> "One which puts an end to a suit or action . . . one which puts an end to an action at law by declaring that the plaintiff either has or has not entitled himself to recover the remedy he sues for."

Whereas an interlocutory judgment is:

> "One given in the progress of a cause upon some plea, proceeding, or default which is only intermediate and does not finally determine or complete the suit. One which determines some preliminary or subordinate point or plea, or settles some step, question, or default arising in the progress of the cause, but does not adjudicate the ultimate rights of the parties, or finally puts the case out of court." BLACK'S LAW DICTIONARY.

Relating these definitions to that portion of the ruling quoted, it must be conceded that the ruling was interlocutory, from which an appeal may not be taken, for our statute provides when an appeal may be taken:

> "Every person against whom any final judgment is rendered shall have the right to appeal from the judgment of the court except from that of the Supreme Court." L. 1963–64, ch. III, Civil Procedure Law, § 5102.

In looking at our statute controlling dismissal of appeals, we find:

> "An appeal may be dismissed by the trial court on motion for failure of the appellant to file a bill of exceptions within the time allowed by statute, and by the appellate court after filing of the bill of exceptions for failure of the appellant to appear on the hearing of the appeal, to file an appeal bond or to serve notice of the completion of the appeal as required by statute." L. 1963–64, ch. III, Civil Procedure Law, § 5116.

It is evident that the grounds of this motion are not suf-

ficient to warrant dismissal. This was conceded by the appellees during argument before this Court when they requested leave to change their demand for dismissal to a request for remand, to which the appellants acquiesced.

In view of the foregoing, the ruling of the court below is hereby set aside, and the request for remand granted, with instructions to the court below to proceed, commencing by ruling on the issues of law already argued, costs to abide final determination of the case. And it is hereby so ordered.

Suspension order set aside, case remanded pursuant to stipulation of parties.