1953 *Present :* **Nagalingam A.C.J., Gratiaen J. and Weerasooriya J.**

T. A. K. DE SILVA, Petitioner, *and* HIRDARMANI LTD., Respondent

S. C. 175—Application for conditional leave to appeal to the Privy Council in S. C. 94, D. C. Colombo 21772

Privy Council—Application for conditional leave to appeal—Valuation of "matter in dispute on the appeal"—Notice to opposite party—Grounds of appeal need not be specified—Rules 1 and 2 of Schedule to Appeals (Privy Council) Ordinance.

Plaintiff sought to recover from defendant a sum of Rs. 2,250 as arrears of payments due to him under an agreement whereby the defendant was allegedly obliged to pay the plaintiff a monthly allowance of Rs. 150 for the rest of plaintiff's life. He further claimed the additional sum that would become due, under the agreement, from date of action till date of decree and for legal interest. The trial Court entered judgment in favour of plaintiff for a total sum of less than Rs. 5,000. The defendant appealed, and his appeal was allowed. The plaintiff, thereupon applied for conditional leave to appeal to the Queen in Council.

Held, that, for the purpose of determining the value of the matter in dispute on the appeal to the Queen in Council, (1) the amounts that became payable to the plaintiff under the alleged agreement subsequent to the date of the decree of the trial Court and up to the date when the Supreme Court pronounced judgment should not be taken into consideration, (2) although the amount at stake in the action was less than Rs. 5,000, representing only part of the instalments that had fallen due up to the date of decree of the trial Court, the action itself raised the entire question of the existence and validity of the contract between the parties, and a settlement of that question one way or the other affected the rights and liabilities of parties beyond the sum of Rs. 5,000 ; the plaintiff was therefore entitled, under the second part of Rule 1 (*a*) of the Schedule to the Appeals (Privy Council) Ordinance, to appeal as of right to the Queen in Council.

Held further, that the notice given by an appellant to the opposite party in accordance with Rule 2 of the Schedule to the Appeals (Privy Council) Ordinance need not specify the particular grounds upon which it is intended to make the application for conditional leave.

Kasipillai v. Nagalinga Kurukkal (1952) 54 N. L. R. 183, overruled.

APPLICATION for conditional leave to appeal to the Privy Council. It was referred to a Bench of three Judges for determination.

H. W. Jayewardene, with *D. R. P. Goonetilleke,* for the defendant respondent.—There are two objections to the present application. Firstly, the matter in dispute on the appeal is not of the value of Rs. 5,000 and, secondly, the notice given of the intended application is bad in law.

The plaintiff-petitioner has valued the action at Rs. 2,250. He must place a value on his action when he comes into Court. Once he has so valued it he cannot subsequently change it to bring him within Rule 1 (*a*) of the Schedule to the Appeals (Privy Council) Ordinance.

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The petitioner had to place evidence necessary for assessing the value of the right. Up to date he has made no attempt to place before Court any material to value his right. See *Appuhamy v. Victor Corea* [1], *Babapulle v. Rajaratnam* [2], *Pemaratne Thero v. Indasara Thero* [3]. The value of the right is the market value—of which there is no evidence. The Court of Appeal cannot set out on its own to place any value—*Ahamadu Lebbe v. Abdul Cader* [4]; *Sokkalal Ram Sait v. Nadar* [5]; *Subbiah Pillai v. Fernando* [6]. The proper test has been laid in the English cases of *Allan v. Pratt* [7] and *Macfarlane Leclaire* [8]. These principles of valuation have been consistently followed here. See *Bandara v. Bandara* [9], *De Alwis v. Appuhamy* [10], *Joseph v. Sockalingam Chetty* [11], *Gooneratne v. Bishop of Colombo* [12] and *Fradd v. Fernando* [13].

In India the position is somewhat different under section 110 of the Indian Civil Procedure Code. The important distinction in the corresponding Indian provision is that it is not only necessary that the subject matter in dispute on the appeal should be of the value of Rs. 10,000 but also that the subject matter of the action in the court of first instance must be of the same value. It is very clear therefore that accruing interest and mesne profits cannot be tacked on to get the sum total over the Rs. 10,000 mark. Vide *Mangamma v. Mahalakshmamma* [14]. The petitioner in the present case has come to Court asking for a decree as set out in paragraph 4 of the petition. Therefore his case comes under the first part of Rule 1 (*a*) and he cannot rely on the second part. Vide *Mangamma v. Mahalakshmamma* [14] and *Subramania Aiyar v. Sellammal* [15].

On the question of notice, the judgment in *Kasipillai v. Nagalinga Kurukkal* [16] is only the logical conclusion of the ruling in *Vanderpooten v. Vanderpooten* [17]. What is required under Rule 2 of the Schedule to the Appeals (Privy Council) Ordinance is notice of the intended application, and the application must be by petitioner. Therefore, what should be served on the respondent is notice of the petition. The word " intended " is important. The effect of that word is that notice should be given before application is made. Vide *Wijesekera v. Corea* [18]; *Pathmanathan v. Imperial Bank of India* [19]; *Balasubramaniam Pillai v. Valliappa Chettiar* [20]. The practice apparently has been always to serve a copy of the application along with the notice. Vide *Wijesekera v. Corea* [18].

L. G. Weeramantry, with *J. R. M. Perera*, for the plaintiff petitioner, was called upon to address only on the question of the value of the matter in dispute on the appeal.—Petitioner comes under the second part of Rule 1 (*a*) of the Schedule to the Appeals (Privy Council) Ordinance, namely, " some civil right amounting to or of the value of Rs. 5,000 or upwards ". Rule 1 (*a*) emphasises particularly the fact that the decisive value is that of the matter in dispute on the date on which appeal to

[1] *(1900) 1 Browne 165.*
[2] *(1900) 1 Browne 304.*
[3] *(1938) 16 Times 43.*
[4] *(1931) 33 N. L. R. 337.*
[5] *(1939) 40 N. L. R. 553.*
[6] *(1950) 52 N. L. R. 217.*
[7] *(1888) 13 A. C. 780.*
[8] *(1862) 15 E. R. 462.*
[9] *(1909) 1 Current L. R. 52.*
[10] *(1929) 30 N. L. R. 421.*
[11] *(1930) 32 N. L. R. 59.*
[12] *(1931) 33 N. L. R. 6C.*
[13] *(1934) 36 N. L. R. 132.*
[14] *A. I. R. 1930 P. C. 44.*
[15] *A. I. R. 1916 Madras 985 at 988.*
[16] *(1952) 54 N. L. R. 183.*
[17] *(1949) 51 N. L. R. 145.*
[18] *(1931) 33 N. L. R. 349.*
[19] *(1937) 39 N. L. R. 103.*
[20] *(1938) 40 N. L. R. 89.*

Privy Council lies. If that is the test, the amount involved is well over Rs. 5,000. See *Mussumat Ameena Khatoor v. Radhabenad Misser* [1].

In regard to the Indian case of *Mangamma v. Mahalakshmamma* (supra), accruing damages can be added. Our Rules are different from the corresponding Indian Rules after amendment. Our Rules are to be interpreted in the light of local decisions and Indian cases before amendment.

The amount of the stamps affixed is not conclusive of the value of the subject-matter—*Mussumat Ameena Khatoor v. Radhabenod Misser* (supra) ; *De Alwis v. Appuhamy* [2]; *Alles v. Alles* [3].

Cur adv. vult.

September 14, 1953. NAGALINGAM A.C.J.—

Two grounds of objection have been taken by the defendant-respondent to the application for conditional leave made by the plaintiff-petitioner to appeal to the Queen in Council. They are, firstly that the minimum monetary limit prescribed by Rule 1 of the Schedule to the Appeals (Privy Council) Ordinance (Chapter 85) has not been reached, and secondly that the notice given of the intended application is bad in law.

The action was instituted by the plaintiff to recover a sum of Rs. 2,250 alleged to be arrears of payments due to him under an agreement at the rate of Rs. 150 a month and for the recovery of the additional sum that would become due at the same rate from date of action till date of decree and for legal interest. The lower court entered judgment on 3rd November, 1950, and at that date the total amount due to the plaintiff under the decree was under Rs. 5,000. The defendant appealed and this court allowed his appeal and dismissed the plaintiff's action on 3rd March, 1953.

The contention on behalf of the defendant is that in these circumstances the matter in dispute on the appeal to the Queen in Council does not amount to the value of Rs. 5,000 or upwards. On behalf of the plaintiff, however, it has been urged that for the purpose of determining the value in dispute on the appeal to the Queen in Council, the amounts that became payable to the plaintiff subsequent to the date of the decree of the lower court and up to the date when this court pronounced judgment should be taken into consideration.

I do not think that the contention of the plaintiff is sound. The plaintiff did not apply, and in fact he could not have asked, for a decree indefinitely *in futuro* for payments to be continued to be made to him at the rate of Rs. 150 without specifying some time limit. In fact in the plaint he has not asked for payment to be made to him during an indefinite period of time. He has definitely, and I think quite properly, fixed the period up to which the court should assess the amount payable to him as the date of entering the decree, and the lower court has entered decree in accordance with the prayer contained in the plaint.

It was also sought by the plaintiff to support his argument by reference to what was termed the reciprocity test. It was put forward in this way.

[1] *(1859) 7 Moore's I. A. 261.*
[2] *(1929) 30 N. L. R. 421.*
[3] *(1945) 46 N. L. R. 445.*

It was said that had this court affirmed the judgment of the lower court the defendant would have been entitled to a right of appeal to the Queen in Council because the liability which the plaintiff would thereby seek to get rid of would have been over Rs. 5,000. I do not think this proposition is sound either, for had this court affirmed the judgment of the lower court at the date it did set it aside, even so the amount recoverable by the plaintiff under the decree would not be anything greater than what had been fixed under the decree of the lower court ; it would be obvious that under the decree so entered the plaintiff could not have issued execution for a sum which may have become due subsequent to the date thereof, though it is easy to see that he would have a right to institute an action in order to recover any such sum. The test of reciprocity, too, therefore fails.

The plaintiff, however, submits in the alternative that the appeal involves indirectly " some civil right amounting to or of the value of Rs. 5,000 or upwards". It is said on his behalf that the effect of the judgment of the lower court was to affirm the validity of the agreement under which he claims, and it would have operated as *res judicata* in regard to the existence and validity of the contract, and the liability of the defendant to pay him the sum of Rs. 150 a month so long as the other conditions contained in that behalf continued to be fulfilled would have been conclusively and finally determined thereby. But it is urged that as a result of the judgment of the lower court being set aside by a finding of this court that there is no binding contract between the plaintiff and the defendant, the principle of *res judicata* now operates adversely against the plaintiff to the extent that he can at no future time claim any payment under the agreement for the judgment of this court is conclusive on the non-existence of a valid agreement between the parties.

It is pointed out further that having regard to the events that have occurred since the date of the judgment of the lower court up to at least the date of application for conditional leave, the reversal of the judgment of this court by the Judicial Committee of the Privy Council would have the effect of restoring to the plaintiff not only the amount decreed under the judgment of the lower court but also indirectly confer on him the right to recover such sums as have accrued subsequent to the date of the judgment of the District Court and up to now, involving, as it then would, the determination of a right which certainly would be over Rs. 5,000 in value.

Mr. Jayawardene for the respondent strongly relied upon the case of *Mangamma v. Mahalakshmamma* [1]. That case, if at all, would have a bearing on the earlier question I have discussed. In that case the question was whether interest should be permitted to be added to the amount claimed, in order to reach the requisite monetary limit, and it was held that it could not be so added, because under the corresponding Indian provision it was not only necessary that the subject-matter in dispute on appeal should be of the value of Rs. 10,000 but that the subject-matter of the action also in the court of first instance must be of the same value. Apart from authority, it is manifest that one cannot tack on the interest that has accrued between the date of institution of action and the date of decree for the purpose of ascertaining that the amount in dispute at the date of action is the total of those two sums.

[1] *A. I. R. (1930) P. C. 44.*

The precise point that arises in this part of the argument is, however, covered by another case which is also one delivered by the Privy Council and that is the case of *Ratha Krishna Ayyar v. Sunderswamy Iyer* [1]. As was observed by Lord Shaw in that case,

> " the sum of money actually at stake may not represent the true value. The proceeding may, in many cases, such as a suit for an instalment of rent or under a contract, raise the entire question of the contract relations between the parties and that question may, settled one way or the other, affect a much greater value, and its determination may govern rights and liabilities of a value beyond the limit. "

That is the exact position in this case. While it is true that the amount at stake in the action is under Rs. 5,000, representing only part of the instalments that had fallen due up to the date of decree of the lower court, the action itself raises the entire question of the existence and validity of the contract between the parties, and a settlement of that question one way or the other affects the rights and liabilities of parties beyond the sum of Rs. 5,000.

I therefore hold that the appeal involves a civil right of the value of over Rs. 5,000 and that the plaintiff is entitled as a matter of right to appeal to the Queen in Council.

I now turn to the next objection raised, namely that relating to the sufficiency of the notice. The requirement as to the notice to be given to the opposite party is to be found in Rule 2 of the Schedule to the Appeals (Privy Council) Ordinance (hereinafter referred to as Ordinance), and it runs as follows :—

> " Application to the court for leave to appeal shall be made by petition within thirty days from the date of the judgment to be appealed from, and the applicant shall, within fourteen days from the date of such judgment, give the opposite party notice of such intended application. "

The notice served on the defendant Company has been produced by its managing director, and it runs as follows :—

> " Take notice that I, T. A. K. de Silva, the plaintiff respondent in the above styled action will in accordance with the Appeals (Privy Council) Ordinance apply to the Honourable the Supreme Court of the Island of Ceylon for leave to appeal to Her Majesty the Queen in Council against the judgment and decree of the Supreme Court pronounced on March 3, 1953. The application for conditional leave will be filed in the Supreme Court within 30 days of the said judgment.
>
> (Sgd.) T. A. K. DE SILVA,
> 11/3/53
> Plaintiff-Respondent. "

It is urged that as the notice does not set out the grounds upon which it is intended to make the application for conditional leave the notice is bad. The law in this sense was interpreted in the case of *Kasipillai et al. v.*

[1] *A. I. R. (1922) P. C. 257.*

Nagalinga Kurukkal [1], and my brother Gunasekara J. who delivered the judgment in that case came to that conclusion largely influenced by a dictum of Wijeyewardene C.J. in the case of *Vander Poorten v. Vander Poorten et al.* [2] (in which case he himself had taken part) where the learned Chief Justice suggested that the

> " object of giving notice is to enable the opposite party to be prepared to show, if possible, that the plaintiff is not entitled to appeal. The opposite party should, therefore, know in time whether the applicant claims a right to appeal and in that case, on what grounds, or whether he pleads that the Court should exercise its discretion in his favour and permit him to appeal ".

With all respect to the learned Chief Justice other reasons can be suggested for the necessity to give notice to the opposite side of an intended application for leave to appeal. An appeal to the Queen in Council would have the effect of staying execution proceedings. Rule 7 of the Schedule to the Appeals (Privy Council) Ordinance expressly provides that this Court shall have power, in granting leave to appeal to the Queen in Council, to direct the judgment appealed from to be carried into execution, subject to conditions, if any. In the absence of such a direction any application for execution made to the District Court even though it be made before the filing of the application for conditional leave would be futile and abortive. See the case of *de Silva v. Hulme King* [3].

I do not think that one should speculate upon the reasons for the requirements as to notice of the intended application beyond drawing the obvious inference to be drawn from such a requirement, which in the language of Hearne J. in the case of *Balasubramaniam Pillai v. Valliappa Chettiar* [4] is

> " merely to apprise him (the opposite party) within a reasonable time of the fact that the litigation is not at an end, and that the unsuccessful party has the intention of applying to the Court for leave to take the subject-matter in dispute between the parties to the Privy Council ".

In any event, the opposite party would have ample time and opportunity after the application is filed in court to get ready to challenge the ground or grounds upon which the right of appeal may be based by an applicant for leave to appeal. The application is required by the Rules framed by this Court to contain a statement of the particular ground upon which the appeal is sought to be rested, whether under the first or second part of sub-rule (*a*) or under sub-rule (*b*) of Rule 1 of the Schedule to the Ordinance—vide the form in Schedule II to the Appellate Procedure (Privy Council) Order, 1921 [5].

It is to be observed that there is no express provision either in the Ordinance or in the Rules that on the filing of the application for conditional leave notice of such application should be given to the respondent. According to the Registrar, no application to Court is made now for

[1] *(1952) 54 N. L. R. 183.*
[2] *(1949) 51 N. L. R. 145.*
[3] *(1935) 14 C. L. Rec. 235.*
[4] *(1938) 40 N. L. R. 89.*
[5] *Subsidiary Legislation, Vol. I, page 472.*

such a notice, nor is there a uniformity of practice from which one could say that the applicant himself serves a copy of the application on the opposite party. In fact in this case there is nothing on record to indicate that the respondent was given any intimation of the filing of the application for conditional leave or that a copy of that petition was served upon him. According to the Registrar, the parties make inquiries at the Registry, and apprise themselves of the contents of whatever papers may have been filed in the Registry.

In contrast to this statement of the Registrar, Poyser S.P.J. in the case of *Pathmanathan v. The Imperial Bank of India* [1] makes the significant observation :—

> " Further in my experience the practice in this Court has been for the applicant to apply in the first place ' ex parte ' for a notice of his application to be served on the respondent and that would appear to be the most convenient practice. "

The notice of application the learned Judge refers to is the notice of the fact that application for conditional leave has been filed in Court. But whether notice is effected by a formal instrument issued at the instance of Court, or without the intervention of Court by the applicant, or whether even without any such instrument being served the respondent secures knowledge of the filing of the application by his own exertions, it would be correct to say that the application for leave is not disposed of excepting in the presence of or at least after proof that notice of the application has been given to the respondent ; and in practice the application itself is never disposed of in fact within thirty days of the date on which the judgment appealed from was delivered, and there is always sufficient time for the respondent to get ready to show cause against the application after receipt of notice or the gaining of knowledge of the filing of the application without it being necessary at all to be apprised, within the fortnight allowed to an applicant to give notice of the intended application, of the ground on which the right of appeal is based.

It is not without interest to refer to a remark of Wijeyewardene C.J., then Wijeyewardene A.J., in the case of *Balasubramaniam Pillai v. Valliappa Chettiar* (supra)—(he was associated with Hearne J. in that case)—which is as follows :—

> " An applicant who sends notice and then files his application before the notice reaches the opposite party is an applicant who gives notice of his intended application, for at the time he sent the notice he had not made the application but had only formed the intention of making such application. "

I would emphasize the words, " but had only formed the intention of making such an application ". And that may be said to be precisely the object of giving notice of the intended application, that is to say, that the applicant had formed an intention of making the application

[1] *(1937) 39 N. L. R. 103.*

but at that stage he may not have made up his mind as regards the grounds upon which he bases his application for the appeal.

Mr. Jayawardene for the respondent also called attention to the practice of a copy of the application for leave being served along with the notice of the intended application, referred to by Drieberg J. in his judgment in the case of *Wijeyesekere v. Corea* [1]. But that was a practice that was in vogue under a provision somewhat different from the one which governs the question now. The present Rule 2 of the Schedule to the Ordinance was introduced by an amendment of 1918 of the previously existing Rule, which ran as follows :—

> " Application to the Court for leave to appeal shall be made by petition within thirty days from the date of the judgment to be appealed from, and the applicant shall give the opposite party notice of his intended application. " [2]

It will be observed that under the earlier Rule both the notice of the intended application and the application to Court had to be made within thirty days of the date of the judgment appealed from. It was therefore convenient to combine the service of both the application and the notice, and effect at one time the service of both these documents. I think Poyser S.P.J.'s reference in *Pathmanathan v. The Imperial Bank of India* (supra)[3] is very probably to the practice under the earlier provision. It will also be seen that the practice of alleging in the petition that notice had been served referred to by Drieberg J. in *Wijeyesekere v. Corea* (supra)[4] has been altered by the Rules framed—vide the form of petition in Schedule II to the Rules. It does not therefore appear to have been necessary under the earlier provision for the notice of the intended application to contain the ground on which the right of appeal is based, which would properly have been embodied in the copy of the petition itself which, as indicated, would be served on the respondent at the same time as the notice.

Mr. Jayawardene, however, says that as a result of the alteration in the law by the requirement that the notice of the intended application should be given within fourteen days, while the application to Court could be made within thirty days, of the date of the judgment, it became necessary for the notice itself to set out the grounds of appeal. I do not think this follows. The notice continued to perform the same function as earlier, merely a notice of an intention to appeal and nothing more, the grounds of the right of appeal being relegated to the petition for leave, and this is all that in my view is required under this new provision.

Though it be a small point, it is of some significance that Rule 2 of the Schedule to the Ordinance refers in the first part of it to the application that has to be made to Court for leave to appeal, but in the latter part of it it refers not to notice of such application but to notice of such *intended* application, which clearly emphasizes the view that at that stage the reference is only to an intention to make an application, not to the application itself.

[1] *(1931) 33 N. L. R. 349.*
[2] *Legislative Enactment 1923, Vol. IV, page 422.*
[3] *(1937) 39 N. L. R. 103.*
[4] *(1931) 33 N. L. R. 349.*

I do not therefore think that the ground upon which the right of appeal is based need be stated in the notice. The notice, therefore, that has been served on the defendant-respondent is in compliance with the requirement of the law, and the objection as to its sufficiency fails.

The case of *Kasipillai et al. v. Nagalinga Kurukkal* (supra)[1] must be regarded as wrongly decided.

At the conclusion of the argument we allowed the application and stated that we would give our reasons later, which I do now.

GRATIAEN J.—

I agree with my Lord the Acting Chief Justice. I desire, however, to add a few observations of my own out of respect for the learned Judges who, in regard to the second objection raised by the respondent, had taken a different view in *Vanderpoorten v. Vanderpoorten* [2] and *Kasipillai v. Nagalinga Kurukkal* [1].

The petitioner was entitled *as of right* to appeal to Her Majesty in Council against the final judgment pronounced by this Court dated 3rd March, 1953. The value of the "matter in dispute on the appeal", assessed in relation to the immediate relief prayed for in the plaint, admittedly falls below Rs. 5,000, but this does not conclude the argument on the respondent's first objection. In the facts of the present case, it is manifest that the appeal indirectly (and, I am inclined to think, directly) "involves" a civil right whose value, if that right be established in the litigation, exceeded Rs. 5,000 on 3rd March, 1953, and has appreciated since that date. The second part of Rule 1 (*a*) of the Schedule to the Ordinance therefore comes into operation. The basis of the petitioner's claim to recover Rs. 2,250 from the respondent Company in this action is that this sum represents arrears of payments due to him under an agreement whereby the respondent was allegedly obliged to pay him a monthly allowance of Rs. 150 subject to certain conditions. The respondent denies that such an agreement ever existed, and this Court has upheld the objection. In the result, the respondent would, so long as the judgment of this court stands, forfeit not only the arrears claimed in the present action but also any claims which, in his submission, have since accrued. It is just such a situation which the second part of Rule 1 (*a*) is intended to cover, because, as Lord Shaw points out in *Ratha Krishna Ayyar's case* [3], "the sum of value actually at stake" in the immediate litigation does not represent the entirety of the financial implications directly or indirectly arising from the *ratio decidendi* of the judgment which the petitioner seeks to challenge in his proposed appeal to Her Majesty in Council.

The second objection raised by the respondent remains to be considered. The argument is that the petitioner has forfeited his right to appeal to Her Majesty in Council because he has failed to comply with the statutory condition prescribed by Rule 2 which is in the following terms :—

"Application to the Court for leave to appeal shall be made by petition within 30 days of the judgment to be appealed from, and

[1] *(1952) 54 N. L. R. 183.*
[2] *(1949) 51 N. L. R. 145.*
[3] *A. I. R. (1922) P. C. 257.*

the applicant shall, within 14 days from the date of such judgment, give the opposite party notice of such intended application ".

It is not disputed that the petitioner did in fact apply to this Court within 30 days for leave to appeal to Her Majesty in Council, and that he has, within the prescribed period, given the respondent due notice of his intention to make that application, Nevertheless, the respondent contends, the notice served on him was invalid because it did not specify the particular ground on which he asserts his right to appeal to Her Majesty in Council.

Rule 2 does not expressly direct that a person should specify in advance the grounds on which he intends to base his application to appeal to Her Majesty in Council from a judgment of this Court. Nor does the Rule so direct by necessary implication. I therefore find no justification for the view that the legislature must have intended in this particular context to penalise a litigant for disobedience to an assumed statutory direction by depriving him of his accrued right to take the litigation before the highest judicial tribunal in the Commonwealth—particularly where, as here, the opposite party cannot seriously pretend that such non-obedience has caused him the slightest prejudice. I am not at all disposed to read into the procedural rules provided by the Ordinance mandatory directions which are not clearly and unambiguously expressed, or to infer that a drastic penalty should be imposed on a litigant for disobedience to an unexpressed statutory direction. Indeed, it is not always an easy matter, even where procedural requirements are expressly laid down by statute, to decide whether they are to be considered as " mere directions or instructions involving no invalidating consequences in their disregard, or as imperative, with an implied nullification for disobedience ".—*Maxwell on the Interpretation of Statutes* (10th Edn.) p. 376.

Rule 2, as far as it goes, is satisfied if an intending appellant gives notice to the opposite party, within the prescribed period of 14 days, *of his intention* to proceed further with the litigation. To that extent, the Rule lays down " an absolute enactment which must be obeyed or fulfilled absolutely "—*Woodward v. Sarsons* [1]. The underlying purpose of the rule is merely (*a*) to apprise the opposite party within 14 days that the litigation must not be assumed to be at an end—*per* Hearne J. in *Balasubramaniam Pillai's case* [2], and (*b*) as my Lord the Acting Chief Justice has pointed out, to give the opposite party, if he so desires, timely opportunity to apply for execution under Rule 7. As the petitioner in the present case has complied with Rule 2, his application for conditional leave cannot be refused.

WEERASOORIYA J.—I have seen the reasons as stated by My Lord the Acting Chief Justice for allowing conditional leave to appeal in this case. With those reasons I am in respectful agreement and I have nothing to add to them.

Application allowed.

[1] *(1875) L. R. 10 C. P. 733.*

[2] *(1938) 40 N. L. R. 89.*