

1914.

Present: Lascelles C.J. and De Sampayo A.J.

COUDERT v. ELIAS.

446—D. C. Colombo, 36,298.

Conditional leave to appeal to the Privy Council—Notice of intended application to respondent—Time for giving notice.

The judgment of the Supreme Court in this case was delivered on February 26, 1914. The petition for conditional leave to appeal to the Privy Council was filed on March 27, 1914, but was returned on the 30th for notice to be given in accordance with the rule. Notice was given on April 1, and the application was set down for hearing on the 7th.

Held, that the application was out of time.

THE facts appear from the judgment.

Hayley, for plaintiff, applicant.

Bawa, K.C., for defendant, respondent.

March 8, 1914. LASCELLES C.J.—

This is an application by the plaintiff for conditional leave to appeal to the Privy Council from the judgment of this Court dated February 26, 1914. The defendant opposes on the ground that the application is out of time.

Rule No. 2 of the scheduled rules to the Appeals (Privy Council) Ordinance, 1909, is as follows:—

2. 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.

The date of the judgment of this Court, as I have said, is February 26, 1914. The petition was filed in the Registry on March 27, 1914, but was returned on the 30th for notice to be given in accordance with the rule. Notice was given on April 1, and the application set down for hearing on the 7th.

In these circumstances, Mr. Bawa contends that the application is out of time, inasmuch as the words "notice of his intended application" show that notice must be given before the application. A similar view of the meaning of the rule was taken in S. C. 446, 1913, and the practice at the Registry, as appears from what happened in this case, is to insist on strict compliance with the rule.

If the matter had been *res integra*, I think that there would have been something to be said for the contention that, after all, the

object of the provision as to notice is to ensure the respondent having reasonable notice of the application to this Court, that the respondent is not benefited by having notice of the filing of the petition in the Registry, and that he has no ground of complaint so long as he has notice of the application a reasonable time before the application comes on for hearing in Court. But in view of the decision to which I have referred, and of the practice which has prevailed. I am reluctantly obliged to refuse conditional leave to appeal.

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DE SAMPAVO A.J.—I agree.

Application refused.

