

1937

Present : Poyser S.P.J. and Koch J.

PATHMANATHAN *v.* THE IMPERIAL BANK OF INDIA.

136—D. C. Colombo, 46,921.

Privy Council—Application for leave to appeal—Computation of time—Exclusive of Supreme Court vacation—Notification of day of application unnecessary—Ordinance No. 31 of 1909, schedule I., Rule 2.

In computing the period of thirty days, within which an application for leave to appeal should be made under Rule 2 of Schedule I. of the Appeals (Privy Council) Ordinance, the days included in a vacation of the Supreme Court should not be reckoned.

The applicant is not bound to give the respondent notice of the day on which the application would be made.

Wijesekere v. Corea (33 N. L. R. 349) not followed.

THIS was an application for conditional leave to appeal to the Privy Council.

Applicant, *K. Pathmanathan*, appears in person.

Weerasooria, for respondent.

Cur. adv. vult.

March 12, 1937. POYSER S.P.J.—

Two points were taken by Mr. Weerasooria on this application. The first point taken was that the notice* of this application which was given to the respondent although admittedly given within a period of fourteen days, did not intimate the day on which such leave would be applied for. The material rule 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, within fourteen days from the date of such judgment, give the opposite party notice of such intended application”. In support of that argument the case of *Wijesekera v. Corea*¹ was cited. In that case the following occurs in the head note—“Where a person applies for conditional leave to appeal to the Privy Council the notice served on the respondent must contain an intimation of the day on which such leave will be applied for”.

On looking at the judgment of Drieberg J. it appears that he was doubtful if a notice at all was served. The petitioner apparently stated he had sent a telegram to the respondent and produced a receipt for a telegram which contained no mention of the person to whom it was directed. The Judge does however in the course of his judgment state “The form of notice adopted in practice include an intimation of the day on which the petitioner will move in the Supreme Court and this is absolutely necessary in order that the respondent may be present or arrange for his representation on the day stated or any other day to which the hearing is adjourned. A mere notice by a petitioner that he is appealing against the order is, in my opinion, not sufficient”.

With the greatest respect I do not think the rule in question requires that the notice must contain an intimation of the day on which the application will be made and it should be added that this decision being the decision of one Judge is not binding on us.

In my opinion the applicant had substantially complied with the provisions of this rule in his notice of December 12, 1936, addressed to the respondent. Apart from the fact that the rule does not specifically state that the day shall be named upon which the application will be made, in practice it would be impracticable to name any such day. The day on which the application will be heard would be decided by the Registrar in accordance with the usual practice. 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.

* Notice referred to.

To,

The Imperial Bank of India, Colombo.

Take notice that I shall apply to the Supreme Court of the Island of Ceylon within Thirty days of the date of the judgment of the Supreme Court in the above case for leave to appeal to the Privy Council from the said judgment of the Supreme Court.

Colombo, 12th day of December, 1936.

Sgd. K. PATHMANATHAN,
Plaintiff-Appellant.

For these reasons I do not think this application should be rejected on this ground.

A further point was taken on behalf of the respondent that the applicant did not make his petition to the Supreme Court within a period of thirty days from the date of the judgment. The judgment was pronounced on November 30, 1936, and the petition to the Supreme Court was filed on January 13, 1937.

There is no provision in the Rules set out in the Schedule to Ordinance No. 31 of 1909 in regard to whether Sundays, public holidays, or Court vacations are to be included in the periods of thirty or fourteen days set out in Rule 2 or the one month set out in Rule 3 (a) nor are the provisions of the Civil Procedure Code in regard to the exclusion of Sundays and public holidays in the computation of time applicable to appeals to the Privy Council.

There is, however, a section in the Supreme Court (Vacation) Ordinance (No. 1 of 1906), viz., section 8, which does deal with the question of vacations in regard to the computation of time. This section is as follows:—(8) “Where by any Ordinance or rule regulating civil procedure or by any special order of the Court any limited time not exceeding one month is appointed or allowed for the doing of any act or the taking of any proceedings in the Supreme Court no days included in a vacation shall be reckoned in the computation of such time unless the Court otherwise directs”.

In my opinion, in the absence of any specific provision in the rules regulating appeals to the Privy Council this section can be invoked in regard to the question as to whether the applicant's petition to the Supreme Court was in time, and if that is so, this application was in time for during the period December 1, 1936, to January 13, 1937, there is the Christmas Vacation of twenty-one days.

For the above reasons leave to appeal to the Privy Council will be granted subject to the usual conditions.

KOCH J.—I entirely agree.

Application allowed.