

1950

*Present: Nagalingam J. and Palle-J.*

VANDER POORTEN, Petitioner, and VANDER POORTEN *et al.*,  
Respondents

*S. C. 444—Application to withdraw the sum of Rs. 3,000 deposited with  
the Registrar of the Supreme Court in S. C. 79—D. C. (Inty.)  
Colombo, 6,889 T.*

*Privy Council—Withdrawal of an appeal—Application made thereafter to withdraw  
sum deposited as security—Proper procedure—Judicial Committee Rules,  
Rule 32.*

The Registrar of the Privy Council notified the Registrar of the Supreme Court that an appeal to His Majesty in Council had been withdrawn and, therefore, by virtue of Rule 32 of the Judicial Committee Rules, stood dismissed. He further requested that steps be taken in the Supreme Court to "terminate the proceedings".

*Held*, that, before the appellant could withdraw the sum deposited by him with the Registrar of the Supreme Court by way of security, he must secure an order of the Supreme Court terminating the proceedings.

**T**HIS was an application to withdraw the sum of Rs. 3,000 deposited with the Registrar of the Supreme Court, in an appeal to His Majesty in Council.

*B. H. Aluwihare*, for the petitioner.

*L. G. Weeramantry*, for the 2nd to 6th respondents.

*Cur. adv. vult.*

October 18, 1950. NAGALINGAM J.—

This is an application by the appellant who had obtained final leave to appeal to His Majesty the King in Council to have refunded to him the sum of Rs. 3,000 deposited by him with the Registrar of this Court by way of security as a condition precedent to his being granted final leave to appeal. The appellant in pursuance of the final leave granted appears to have taken the necessary steps to have the record despatched to England and in fact the record was despatched and received by the Registrar of the Privy Council on January 7, 1947.

Under the Judicial Committee Rules, 1925, an appellant, in the case of an appeal from Ceylon, is allowed a period of four months from the date of the arrival of the printed record in England to lodge his petition of appeal. In this case the record in fact was printed in Ceylon. The appellant therefore had time till May 8, 1947, to lodge his petition of appeal, but prior to that date, namely on April 8, 1947, he appears to have given notice in writing to the Registrar of the Privy Council that he desired to withdraw his appeal, and the Registrar of the Privy Council thereupon in terms of Rule 32 of the Rules referred to notified by letter the Registrar of this Court that the appeal had been withdrawn.

Rule 32 proceeds to declare that in such an eventuality the appeal should stand dismissed as from the date of the letter of the Registrar of the Privy Council without further order. The letter of the Registrar of the Privy Council is filed of record and, besides setting out the fact that by virtue of Rule 32 of the Judicial Committee Rules the appeal stands dismissed as from the date of his letter without further order, proceeds to say, "I have accordingly to request you to be good enough to bring this communication before the Judges of your Court in order that the necessary steps may be taken to terminate the proceedings". It is important to note that though the appeal is said to stand dismissed, nevertheless the communication indicates that some further steps should be taken to terminate the proceedings.

Although no petition of appeal had in point of fact been filed in the Privy Council and all that was done by the appellant was to have obtained final leave of this Court to appeal to His Majesty in Council and to have the printed record transmitted to the Registrar of the Privy Council, Rule 32 of the Judicial Committee Rules uses language which recognises the proceedings which were had prior to the filing of the petition of appeal as an appeal. It may be said that the language of Rule 32 is not exact, but whatever that may be, the terms of the letter of the Registrar of the Privy Council indicates that though the "appeal" may stand dismissed without further order in terms of Rule 32, yet other steps have to be taken to "terminate the proceedings."

Ordinarily, when one uses the phraseology, "the appeal stands dismissed" one would infer that nothing further need be done, for the proceedings are in fact terminated by the order that the appeal stands dismissed. In this case it does not appear to be so. The appellant seeks to withdraw the fund deposited by him on the footing that the proceedings have terminated, and that nothing further remains to be done. But this is in the teeth of the communication addressed by the Registrar of the Privy Council to the Registrar of this Court. Besides, as I have pointed out, the term "the appeal stands dismissed" must receive a special meaning having regard to the stage at which the order was made and must mean that the appellant does not desire to lodge his petition of appeal and to proceed further with the appeal, in other words, that he does not wish to prosecute the appeal.

The foundation for the application made by the appellant therefore fails for no order has been made terminating the proceedings; such an order appears to be essential before it could be said that finality has been reached in regard to the appeal proceedings commenced by the appellant. The appellant must in these circumstances take steps to have the proceedings terminated, and to secure an order of this Court terminating the proceedings. That will then be the stage at which the respondents could apply for any order for costs which they say they are entitled to claim from the appellant.

In this view of the matter the application fails and is dismissed with costs.

PUILE J.—I agree.

*Application dismissed.*