

1956

*Present: Weerasooriya, J., and Sansoni, J.*

KANDASWAMY *et al.*, Petitioners, and KANDAVANAM *et al.*,  
Respondents

*S. C. 586—Application for Conditional Leave to appeal to the Privy Council in S.C. 293, D.C. Point Pedro 3,955.*

*Privy Council—Application for conditional leave to appeal—Notice to opposite party—Power of Proctor to give such notice without client's authority—The Appeals (Privy Council) Ordinance (Cap. 85), Schedule, Rule 2.*

Where a Proctor, whose proxy did not empower him to act for his client for the purpose of taking steps to appeal to the Privy Council, purported, without any other authority from his client, to give notice to the opposite party in terms of Rule 2 of the Schedule to the Appeals (Privy Council) Ordinance—

*Held*, that the notice was invalid. Nor could such notice be made valid by any subsequent grant of authority after the expiry of the period of fourteen days prescribed under the Rule.

**A**PPPLICATION for conditional leave to appeal to the Privy Council.

*S. J. V. Chelvanayakam, Q.C.*, with *A. Nagendra*, for the plaintiffs-petitioners.

*C. Thiagalingam, Q.C.*, with *V. Arulambalam* and *C. Chellappah*, for the 1st and 2nd defendants-respondents.

*Cur. adv. vult.*

May 30, 1956. WEERASOORIYA, J.—

This is a joint application by the plaintiffs and the 3rd and 4th defendants for conditional leave to appeal to Her Majesty in Council against the judgment of this Court which is reported in 57 New Law Reports, page 241. The facts of the case are fully set out in that judgment.

The respondents to the present application are the 1st and 2nd defendants, and several objections were taken on their behalf by Mr. Thiagalingam against the granting of the application.

One of these objections was that no notice of their intended application for leave to appeal was given by the applicants in terms of Rule 2 of the rules in the Schedule to The Appeals (Privy Council) Ordinance

(Cap. 85). On the 5th November, 1955, which is within the period of fourteen days allowed for such notice under Rule 2, a registered letter was posted to the 1st and 2nd defendants (who are husband and wife) giving them notice of the intended application. This letter is signed by Proctor Subramaniam as proctor for the plaintiffs and by Proctors Kandiah and Mylvaganam as proctors for the 3rd and 4th defendants. While proxies in favour of these proctors had been granted by the plaintiffs and the 3rd and 4th defendants respectively for the purpose of the action, it was conceded by Mr. Chelvanayakam who appeared for them at the hearing of this application that the authority granted by those proxies did not empower the proctors to act for them for the purpose of the requisite notice under Rule 2. In the original application and supporting affidavit filed by the applicants it was not stated that the proctors, in purporting to give on their behalf the notice in the registered letter referred to, acted on any authority other than the authority derived from the proxies already granted in their favour.

After the 1st and 2nd defendants had filed a statement of objections, which included the particular objection under consideration, a joint counter-affidavit dated the 5th February, 1956, was filed by the applicants in which it is stated that they had "duly authorised" their proctors to send the notice dated the 5th November, 1955. This vague statement leaves it open to conjecture whether the applicants relied on such authority as was conferred in the proxies previously granted by them to the proctors who signed that notice, or whether an express authority to send the notice had been given by them to the proctors. No affidavit has been filed by the proctors themselves as to the nature of the authority under which they purported to act in giving that notice. In the circumstances I hold that the applicants have not made out to the satisfaction of this Court that at the time when the notice dated the 5th November, 1955, was sent the proctors who signed it had any authority to act on behalf of the applicants for the purpose of such notice.

Mr. Chelvanayakam submitted, however, that even if that notice had been given without the authority of the applicants, the subsequent ratification by them of the act of the proctors has had the effect of making it the act of the applicants. The purported ratification is contained in the same affidavit of the applicants dated the 5th February, 1956, which, however, is long after the expiry of the period of fourteen days within which the notice under Rule 2 had to be given.

The doctrine of ratification has been explained by Tindal, C.J., in *Wilson v. Tumman*<sup>1</sup> in the following terms:—

"That an act done, for another, by a person, not assuming to act for himself, but for such other person, though without any precedent authority whatever, becomes the act of the principal, if subsequently ratified by him, is the known and well-established rule of law. In that case the principal is bound by his act, whether it be for his detriment or his advantage, and whether it be founded on a tort or a contract, to the same extent as by, and with all the consequences which follow from, the same act done by his previous authority."

<sup>1</sup> (1843) 6 M & G. 236 at 242.

But Bowstead in his *Law of Agency*<sup>1</sup> states that ratification can only take place in accordance with and subject to certain rules and qualifications, one of which is that where it is essential to the validity of an act that it should be done within a certain time, the act cannot be ratified after the expiration of that time, to the prejudice of any third person. It has, thus, been held that where a person purporting to act on behalf of a landlord, but without his authority, gives a tenant notice to quit, such notice cannot be made binding on the tenant by the landlord's ratification after the notice had begun to operate—*Mann v. Wallers*<sup>2</sup>. So also, where two partners had agreed that on the death of one of them the survivor shall have the option of purchasing the share of the deceased on giving notice to his executors within three months after death and, one of the partners having subsequently died, a solicitor purporting to act on behalf of the surviving partner, but without his authority, gave notice to the executors of the deceased partner, within the prescribed time, of the intention of the surviving partner to exercise the option, it was held that such notice could not be ratified after the expiration of the time so as to bind the executors—*Dibbins v. Dibbins*<sup>3</sup>.

It is clear, therefore, that the ratification by the applicants on the 5th February, 1956, of the notice given on the 5th November, 1955, cannot have the effect contended for by Mr. Chelvanayakam. Consequently the applicants must be regarded as having failed to give the requisite notice in terms of Rule 2. The provisions of this rule are peremptory and the Court has no power to extend the time for the giving of such notice unlike where an act is required to be done within a prescribed time under the Appellate Procedure (Privy Council) Order, 1921, which has been made under Sections 3 (b) and 4 (1) of the Appeals (Privy Council) Ordinance and which contains express provision (Rule 18) for extending the time allowed by that Order for doing any act notwithstanding that the time has expired. In the result, the present application for conditional leave to appeal cannot be maintained.

There are certain decisions of this Court which have held that an act done as a step in a pending action by a proctor purporting to do it on behalf of a party to the action, who had, however, omitted to grant a proxy authorising such act, may be ratified by the subsequent granting of a proxy even though after the expiry of the time for doing such act. In *Kadirgamadas et al. v. Suppiah et al.*<sup>4</sup> the proctor who had filed the petition of appeal on behalf of some of the appellants had no proxy in his favour at the time he filed the appeal. But it was held, following the decision in *Tillekeratne v. Wijesinghe*<sup>5</sup>, that the subsequent filing of a proxy, even after the appealable time had lapsed, cured the irregularity. In the present case no proxy has been granted even subsequently by the applicants in favour of the proctors who sent the notice dated the 5th November, 1955, authorising them to represent the applicants for the purposes of proceedings under the Appeals (Privy Council) Ordinance. Moreover, the decision in each of the two cases referred to went on the basis that, notwithstanding the absence of the proxy, the

<sup>1</sup> (11th ed) 36.<sup>2</sup> (1896) 2 Ch. 343.<sup>3</sup> (1830) 10 B. & C. 626.<sup>4</sup> (1953) 56 N. L. R. 172.<sup>5</sup> (1908) 11 N. L. R. 270.

Court was satisfied that the proctor had, at the material time, the authority of the client on whose behalf he purported to act. The subsequent granting of the proxy did not, therefore, strictly amount to a ratification (of an act done without precedent authority) as explained in *Wilson v. Tunnan* (*supra*), and these decisions do not appear to be a departure from the rule stated by Bowstead that where it is essential to the validity of an act that it should be done within a certain time the ratification of it must also be within that time. I have already stated my reasons for holding that the notice dated the 5th November, 1955, was not sent with the authority of the applicants and cannot be regarded as a notice given by them.

The conclusion which I have reached makes it unnecessary for me to consider the other objections raised by Mr. Thiagalingam.

The application for conditional leave to appeal is refused with costs.

SANSONI, J.—I agree.

*Application refused.*

