

limitation of damages clause applied with the result that the awards were considerably reduced, viz. to sums of \$26,911 and \$2,000 respectively. The judgment was delivered on the 22nd. January, 1982.

On the 19th February, 1982, the plaintiffs/applicants filed the present notice of Motion for leave to appeal to Her Majesty in Council. It is not disputed that prima facie there would have been an appeal as of right in this case, within the provisions of Section 110 of the Constitution of Jamaica. The application was to be heard on the 1st. March, 1982. On that date the defendant/respondent filed notice of a preliminary objection to the granting of leave, on the ground the application for leave was made out of time.

When the matter came before us on the 1st. March, the parties consented to its being heard on the 5th March. The applicants on the 4th March gave notice of a further application, that being an application for leave to appeal out of time, or to extend the time within which their application could be made.

The Rules which regulate appeals from Jamaica to the Judicial Committee were made by Her Majesty on the 30th day of July, 1962 by and with the advice of Her Privy Council, and are contained in an order in Council: "The Jamaica (Procedure in Appeals to Privy Council) Order in Council 1962."

Section 3 of the Order in Council provides:

"3. Applications to the Court for leave to appeal shall be made by motion or petition within twenty-one days of the date of the judgment appealed from, and the applicant shall give all other parties concerned notice of his intended application."

Even where appeal lies as of right, it is still necessary to get leave to appeal, though this may be obtained from a single judge of the Court of Appeal, who is empowered under Section 5 of the Order in Council to fix all the necessary details and directions.

The twenty-one days within which applications to the Court for leave to appeal must be made expired on the 12th February, 1982, but this application was not filed until the 19th February, 1982. It is therefore clearly out of time, unless there is any Rule or Order of this Court applicable which would empower the Court to extend the time for appealing.

Counsel for the plaintiffs/applicants referred to Rule 9 of the (Jamaica) Court of Appeal Rules, 1962. The present version of Rule 9 (which has been amended more than once) is set out in The Court of Appeal (Amendment) Rules, 1977: The opening sentences of it read:

"9. - (1) Subject to the provisions of sub-section 15 of the Law, and to Rule 23* of these Rules, the Court shall have power to enlarge or abridge the time appointed by these or any other Rules relating to appeals to the Court,"

(Emphasis supplied. *Rule 23 relates to extensions of time granted by the Court below).

Counsel argued that Rule 9 gave power to enlarge the time appointed by "any other Rules" and this would include the time fixed by The Jamaica (Procedure in Appeals to Privy Council) Order in Council 1962. This ignores the words that follow: "relating to appeals to the Court." This is not an appeal to this Court: it is an appeal to the Privy Council. Rule 9 can not apply. It was designed, as worded, to cover a number of appeals that lie to the Court of Appeal from various statutory bodies, and it is to the Rules governing those appeals that the words "or any other Rules" apply.

The Rules governing appeals to the Privy Council were made by Her Majesty by virtue and in the exercise of the powers in that behalf given by an Imperial Statute, The Judicial Committee Act, 1844, 7 & 8 Vict. C. 69, and by and with the advice of Her Privy Council. Amendment of those Rules does not lie within the competence of the Rules Committee of the Supreme Court of Jamaica.

There is also a fair body of case law in which the effect of the Privy Council Rules has been considered both by this Court, and by the Privy Council itself. We mention a few of these cases below.

In Smith v. McField (1968) 10 J.L.R. 555 this Court considered Rule 4 of the Privy Council Rules, particularly sub Rule (a) which fixes an outside period of ninety days for the entering into security for the due prosecution of the appeal and the Court concluded, in the words of Luckhoo, J.A. at page 557:

"I am of the view that neither the court nor a judge thereof is empowered to extend the period of time within which security for the prosecution of an appeal to Her Majesty in Council may be made beyond a period of 90 days from the date of the hearing of an application for leave to appeal to Her Majesty in Council and the respondent's objection in limine is well taken."

In R. v. Lancy Simpson (1977) 15 J.L.R. 190, this Court held that the time period fixed by the Privy Council Rules applied to both civil and criminal appeals, and consequent on this, it was conceded by the appellant and so held by the Court that this Court had no power to extend the time and that the motion would fail. (See page 191 H).

In Roulstone v. Panton (1979) 1 W.L.R. 1465, an appeal from this Court sitting as the Court of Appeal for the Cayman Islands, their Lordships in the Privy Council again considered Rule 4 of the Privy Council Rules (which is identical with Rule 5 of the Cayman Islands (Appeal to Privy Council)) Order, 1965.

Their Lordships expressly approved Smith v. McField (supra) as a correct decision in reference to the time frame fixed by sub Rule (a) for entering into security. Giving their Lordship's judgment, Lord Russell of Killowen said at page 1468 B:

"In the one case (i.e. (a)) there is a maximum period of 90 days laid down by the Order in Council, and clearly the court has no jurisdiction to alter the Order in Council by extending that period;

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and it was so held by the Court of Appeal of Jamaica under parallel provisions of the Jamaica (Procedure in Appeals to Privy Council) Order in Council, 1962: See Smith v. McField (Emphasis supplied).

The Privy Council went on to hold however that in relation to sub Rule (b) governing the preparation and despatch of the record, there was power to fix and also to extend that period.

These cases show that this Court has no power to extend the times fixed by Sections 3 and 4 (a) of The Jamaica (Procedure in Appeals to Privy Council) Order in Council 1962 governing the application for leave to appeal. The respondent's objection in limine was well taken, and the applications were refused, with costs to the respondent, to be taxed or agreed.