

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 4/73

BEFORE:

THE HON. MR. JUSTICE HENRY J.A.  
THE HON. MR. JUSTICE KERR J.A.  
THE HON. MR. JUSTICE ROBOTHAM J.A.

BETWEEN

ARCHIBALD NEWLAND

JULIAN NEWLAND

- Plaintiffs/ Respondents

AND

JOSEPH WALKER

VIRGINIA BROWN

- Defendants/Appellants

Mr. Berthan Macaulay Q.C. &amp; Mrs. Macaulay for Defendants/Appellants.

Mr. M. Nunes for the Plaintiffs/Respondents.

May 18, 19, 31, 1978HENRY J.A.

By a written judgment of the Court delivered on May 5, 1978 the appeal of the Defendants in this matter was dismissed with costs to the Plaintiffs/Respondents and the Respondents having failed in their notice were ordered to pay to the Appellants the costs (if any) incurred in respect of that notice. The Appellants sought to vary the orders contained in that judgment, and the preliminary question which we had to decide was whether this Court had any power to entertain the application.

It was the submission of counsel for the appellants that by virtue of rule 18 (1) of the Court of Appeal rules, this Court in relation to an appeal from the Supreme Court has all the powers of the Supreme Court as to amendment and otherwise, that by virtue of rule 18 (3) the Court of Appeal declares what the judgment of the Supreme Court ought to have been and the Court of Appeal judgment when substituted for the Supreme Court judgment becomes a judgment to which section 579 of the Judicature (Civil Procedure Code) Law applies. That section provides, subject to the exceptions stated therein, that a judgment must be drawn up and entered before it may be enforced. It was the further submission of counsel for the appellants that although rule 38 of the Court of Appeal rules provides that the judgment "shall be enforced" that enforcement is subject to section 579. Consequently, it was argued, one must look

solicitors to attend before him and may unless a satisfactory explanation be forthcoming make such order as to the payment of all or any part of the costs of drawing up and entering the judgment or order as he shall think it fit. He may also direct that as against any party responsible for such delay the time for appealing from such judgment or order shall run as from the date when the same ought to have been drawn up and entered in accordance with this subsection.

- (3) Every judgment or order shall after entry be forthwith filed with the proceedings.
- (4) A judgment or order hereby required to be drawn up and entered shall not be acted on or enforced unless and until such judgment or order has been so drawn up and entered."

It contemplates three separate steps in relation to a judgment or order of the Supreme Court:-

1. The recording by the Registrar of a minute of the judgment or Order.
2. The drawing up and entering of the judgment or order by the party having the carriage of it.
3. The filing of the judgment or order after entry.

Insofar as a judgment of the Court of Appeal modifies or replaces a judgment of the Supreme Court it seems to us that the effect of rule 38 is to by pass the first two steps contemplated by section 579 and to proceed directly to the third step - the filing of the judgment which thereupon "shall be enforced" by the Supreme Court. In our view a certificate under rule 38 setting forth the judgment of the Court of Appeal is for the purpose of section 579 equivalent to a judgment of the Supreme Court already drawn up and entered. It follows therefore that once the Registrar's certificate has been filed in accordance with rule 38 the judgment to which it relates is perfected and the Court can no longer entertain applications to modify it.

It is for these reasons that, the Registrar's certificate having been filed in the Supreme Court under rule 38 on May 12, 1978, we concluded on May 19 that the judgment of May 5 had been perfected and the application to modify it could not be entertained.

at section 579 to discover when the judgment of the Court of Appeal has been perfected and until that judgment has been perfected, it may be modified on the same principle that a Supreme Court judgment may be modified in similar circumstances.

re:

(vide/Harrison Settlement Trusts 1955 1 All E.R. 185).

We have no doubt that an appeal may be reheard and a judgment of the Court of Appeal modified at any time prior to the perfection of that judgment. Once the judgment has been perfected, however, there is no power to rehear the appeal. (Vide Hession v Jones (1914) 2 K.B. 421, Flower v Lloyd (1877) 6 Ch. D. 297). The real question which we have to consider is when does a judgment of the Court of Appeal in relation to an appeal from the Supreme Court become perfected. In our view the answer to that question lies in rule 38 of the Court of Appeal Rules. That rule which has no counterpart in the English rules, provides as follows:-

"38 A certificate under the seal of the Court and the hand of the Registrar setting forth the judgment of the Court shall be filed in the Registry of the Court below, and the judgment shall be enforced by that Court."

It does not, as counsel for the appellants submitted, provide merely for the enforcement of judgments of the Court of Appeal or for the removal of doubts as to the method of enforcing those judgments as does section 42 of the English Administration of Justice Act, 1956. The rule must we think be read in conjunction with section 579 of the Judicature (Civil Procedure Code) Law. That section provides as follows:-

- "579 (1) A minute of every judgment or order, whether final or interlocutory, shall be made by the Registrar at the time when the judgment is given or the order is made and shall be approved by the Court or the judge.
- (2) Subject to the provisions of section 495 every judgment or order shall unless otherwise ordered be drawn up and entered by the party having the carriage of such judgment or order or his solicitor within 14 days from the date thereof, and if any judgment or order shall not have been drawn up and entered within the time aforesaid the Registrar shall report to the Judge in writing as to the reason why the provisions of this subsection have not been complied with and whether in his opinion any and which of the parties or their solicitors are responsible for the delay, and thereupon the Judge may direct such parties or