



in the Supreme Court for a declaration that he was entitled to certain lands and included a prayer for an injunction. Subsequent to the filing of the writ the Plaintiff filed a motion for an interlocutory injunction to restrain the Defendant/Respondent from taking possession of the land, the subject of the law suit and proceeded ex-parte on that interlocutory injunction. The motion for the interlocutory injunction was dismissed by Shelley J. on the 1st of February, 1963, and on the 2nd of February of the same year the Appellant filed a fresh motion asking for the same relief. On the 11th of February the Defendant/Respondent entered an appearance, and on the following day, the 12th of February, the Respondent took out a summons to strike out the Appellant's statement of claim in his original action. The Appellant's motion for an interlocutory injunction and the Respondent's summons to strike out the statement of claim came before Fox J. He first heard the summons to strike out. He heard the arguments and then on the 29th of October, 1963, made an order striking out the Appellant's statement of claim.

On the 5th of November, 1963, the Appellant lodged a notice of appeal without having first obtained leave to appeal from Fox J. who had heard the matter in the Supreme Court, or from this Court. Nothing more was heard of the matter for close on to three years. On the 15th of July this year the appeal first appeared on the lists of this Court. Shortly before that, to wit, the 1st of July, 1966, we are told that an ex-parte application was made to Fox J. for leave to appeal and an order purporting to grant leave to appeal was made by Fox J. on the 11th of July this year.

We were told in the course of arguments that an appeal or purported appeal has been lodged by the Respondent against the order of Fox J. but it would seem that this appeal has not yet been perfected, and certainly it is not before this Court today. What is before this Court is the appeal by the Plaintiff/Appellant and the preliminary objections taken by learned counsel for the Respondent. We have listened with interest to the arguments by learned counsel on both sides and it is our view that the matter can be resolved today very briefly.

The Court of Appeal, that is to say, this Court is a creature of statute. It has been created by the Constitution of Jamaica and its jurisdiction and powers are to be found in the Judicature (Appellate Jurisdiction)

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Law of 1962 - Law 15 of 1962. Section 9 of that Law gives the court jurisdiction for hearing and determining appeals from any judgment or order of the Supreme Court in all civil proceedings. Section 10 of that Law is a section which limits the right of appeal, and Section 10(1)(f) provides that: 10-(1)"No appeal shall lie - (f) without the leave of the Judge or of the Court of Appeal from any interlocutory judgment or any interlocutory order given or made by a judge --" with certain exceptions with which we are not concerned today.

It is agreed by both sides in this matter that the appeal before this Court is from an interlocutory order made by Fox J. on the 29th of October, 1963. It has not been suggested by anyone that what Fox J. ordered was a final order. It is also not disputed that it is necessary for leave to be obtained to enable the appeal to come before this Court.

It is the submission of counsel for the respondent that the purported leave which was granted by Fox J. nearly three years after the order was made is void and of no effect. It is the submission of counsel for the appellant that the order granting leave is not void but that it was a good order and that the notice of appeal was "dormant and remained sleeping" until leave was granted, and that the order granting leave was a valid order and had the effect of "awakening" - and here I am quoting learned counsel's words- the notice of appeal which had been lodged within fourteen days of the order striking out the statement of claim.

The section of the law which is now under review in this court - Section 10(1)(f) - is clear and positive. It states that "No appeal shall lie" without leave, and it is our view that this means exactly what the words state and that no appeal proceedings can be commenced until leave has been granted, and therefore, any notice which may have been filed without leave being first obtained is of no effect. It is completely valueless and void, and the submission of learned counsel that that notice has been revived by the subsequent leave is a submission that we are unable to accede to.

Furthermore, another objection taken in the notice of preliminary objection, namely, that the provisions of Rule 13(a) have not been complied with, is in our view a valid and sound objection. Rule 13 provides that:-

13. Every notice of appeal shall be filed, and a copy thereof shall / be

be served under paragraph (4) of rule 12 hereof within the following periods (calculated from the date on which the judgment or order of the Court below was signed, entered or otherwise perfected), that is to say:-

- (a) in the case of an appeal from an interlocutory order, fourteen days.

In this case it is quite clear that no leave has been obtained from this Court under Rule 9 to enable the appellant to file a notice of appeal after the expiration of fourteen days. In our view, as the purported notice of appeal which was filed in November, 1963, was without force and cannot be revived by the subsequent granting of leave the appellant will be left in the position that he will not have obtained leave to lodge the appeal out of time or leave to serve his notice of appeal out of time, and in these circumstances the appeal is not properly before the Court of Appeal.

Further, the court orders that the purported notice of appeal lodged on the 5th November, 1963, without leave having been first obtained, be struck out. There will be costs to the respondent.

HENRIQUES, J.        I agree.

WADDINGTON, J.     I agree.

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