

Present : Garvin and Dalton JJ.

1927.

HALL v. PELMADULLA VALLEY TEA AND
RUBBER COMPANY.

326—D. C. Ratnapura, 4,107.

Privy Council—Application for final leave—Condition fulfilled within time—Vacation Ordinance No. 1 of 1906, s. 8.

The applicant was granted conditional leave to appeal to the Privy Council on March 28, 1927. He complied with the conditions imposed upon him on April 27, when the vacation of the Supreme Court had commenced. The vacation lasted till May 5. and application for final leave was made on May 7.

Held, that the application was in time.

APPPLICATION for final leave to the Privy Council.

Choksy, for respondent, showed cause that the application has to be made within one week of the compliance with the conditions. On the face of it the application is not made within a week.

“ Week ” means seven successive days. (*27 Halsbury 439*). The week expired on Thursday, May 5. The application was not made till May 7. Notice of the application was not given through the Court. The appellant cannot therefore claim to exclude the holidays inasmuch as the notice was not an act of Court. (*Hayley & Kenny v. Zainudeen.*¹)

Under section 7 of the Interpretation Ordinance, Sundays and public holidays cannot be excluded. At the most the application could have been made on May 6. The rule as to the time within which notice has to be given has been strictly acted upon. (*Coudert v. Elias.*²)

Ferdinands, in support.—The applicants complied with all the conditions imposed upon them upon the granting of conditional leave to appeal on April 27, 1927; this date came within the Supreme Court vacation, which continued up to May 6. The application for final leave bears date May 7. Rule 21 must be read subject to the provisions of section 8 of the Vacation Ordinance, No. 1 of 1906. The result is that applicants still have a considerable time within which they can make the application for final leave.

May 12, 1927. GARVIN J.—

This is an application for final leave to appeal to His Majesty in Council. Conditional leave was granted on March 28, and on April 27—it is admitted—the applicant complied with all the conditions

¹ 25 N. L. R. 312.

² 18 N. L. R. 80.

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upon which the original application was granted. This application was made on May 7. Counsel for the respondent urges that the application for conditional leave to appeal should be rescinded upon the ground that more than one week has elapsed since the date when the applicant complied with the conditions. It is to be noted, in the first place, that rule 21 vests a discretion in the Court as to whether or not it will rescind the leave already granted. It would seem that at the time the conditions were fulfilled the vacation of this Court had already commenced, and that vacation continued till May 6, on which date the Court resumed. Now section 8 of the Vacation Ordinance provides that—

“ Where by any Ordinance, or rule regulating civil procedure, or by any special order of the Court, any limited time not exceeding one month is appointed or allowed for the doing of any act or the taking of any proceeding in the Supreme Court, no days included in a vacation shall be reckoned in the computation of such time unless the Court otherwise directs. ”

This is not a case in which the limit of time has been fixed by the Court or any special directions have been given. The time limit is prescribed in rule 21 of the rules laid down for appeals to His Majesty in Council. The application as now made is an act in Court. It is clear therefore that the provisions of section 8 apply to the circumstances of this case. Its effect is this, that the plaintiff still has a considerable time within which he can make his application.

For these reasons I think the objection to the granting of this application fails.

I think the applicant is entitled to his costs.

DALTON J.—I agree.

Application allowed.