

1923.

Present : Bertram O.J. and Porter J.

HAYLEY AND KENNY *v.* ZAINUDEEN.

318—D: C. Colombo, 3,121.

Appeal to Privy Council—Conditional leave—Notice to respondent within fourteen days of judgment—Supreme Court vacation—Notice given without aid of Court.

Where appellant moved for conditional leave to appeal to the Privy Council, respondent objected that he had not received notice of the application within fourteen days of the judgment. The appellant contended that he was protected by section 8 of the Supreme Court Vacation Ordinance, 1905, inasmuch as this notice was an act of Court.

Held, that as the notice given by appellant was given by a document addressed to respondent without the aid of Court, the notice was not an act of Court.

THIS was an application for conditional leave to the Privy Council.

E. W. Jaywardene, for the defendant, respondent.—The respondent did not receive notice of the application within the specified time—within fourteen days of the judgment. The applicant cannot now obtain leave to appeal to the Privy Council.

H. E. Garvin, for the plaintiff, applicant.—Where 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 day included in a Supreme Court vacation is to be reckoned in the computation of such time, unless the Court otherwise directs. The Christmas vacation which lasted for three weeks intervened in this case.

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The applicant may still apply for an order that notice may be served through Court under clause 5 of the Privy Council Order.

January 19, 1923. BERTRAM C.J.—

This is an application for conditional leave to appeal to the Privy Council. Mr. E. W. Jayewardene, appearing for the respondent, has taken an objection, the objection being that he did not receive notice of this application within fourteen days of the judgment. Mr. Garvin, who appears for the applicant, contends, in the first place, that he is protected by section 8 of the Supreme Court Vacation Ordinance of 1905, inasmuch as this notice was—so he contends—an act of the Supreme Court within the meaning of that section. I do not think that this is a good contention. The notice which was given was given simply by a document addressed to the other side without the aid of the Court, and that method of serving the notice is expressly provided for by clause 5 of the Appellate Procedure, Privy Council Order, 1921, which will be found reported in the *Ceylon Law Recorder*, vol. III., on page 64. A notice so served is, in my opinion, not an act in the Court. It is not necessary to consider the application of section 7 of the Interpretation Ordinance, No. 21 of 1901. That clearly does not help Mr. Garvin, and for the same reason. It appears, therefore, that this application is irregular. Mr. Garvin, however, maintains that it is still open to him, even though his original notice may be defective, to exercise the option given to him, under clause 5 of the Order referred to, to apply to a single Judge for an order that the notice may be served through the Court, and asks leave to withdraw his present application. I think that that application may be granted, subject to his paying the costs of the other side, and without prejudice to the rights of either party in the matter.

PORTER J.—I agree.
