

1943

*Present : Keuneman and Jayetileke JJ.*HUSSAIN, Appellant, *and* ABDEEN, Respondent.APPLICATION FOR CONDITIONAL LEAVE TO APPEAL TO THE
PRIVY COUNCIL.

126—D. C. Colombo, 12,034.

*Privy Council—Application for conditional leave—Notice to respondent—
Computation of time—Supreme Court Vacation Ordinance, s. 8.*

In the computation of time within which notice of application for conditional leave to appeal to the Privy Council should be given to the respondent, Sundays and public holidays should not be excluded.

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

N. Nadarajah, K.C. (with with V. A. Kandiah), for defendant, appellant.

C. Thiagalingam for plaintiff, respondent.

Cur. adv. vult.

September 16, 1943. KEUNEMAN J.—

Objection is taken by the respondent to the grant of conditional leave on the ground that the appellant has failed to give the respondent notice of this application within fourteen days from the date of the judgment. The judgment of the Supreme Court was delivered on July 29, 1943, and notice was served on the respondent on August 27, 1943. From this period the Court vacation has to be excluded, (see *Pathmanathan v. The Imperial Bank of India*¹ followed by *Palaniappa Chetty v. Mercantile Bank of India*²). But even after excluding the vacation, more than 14 days elapsed between the judgment and the service of the notice of application. The notice was in fact served through the Supreme Court.

¹ 16 N. L. R. 438.² 43 N. L. R. 352.³ 39 N. L. R. 103.

Mr. Nadarajah contends that he has complied with the necessary formalities on two grounds. First, he points out that the period includes one public holiday, July 31, and three Sundays, namely, August 1, 8, and 22. He claims that those days also should be excluded. If this is correct, the service of the notice of application was in time.

Mr. Nadarajah contends that these days must be regarded as "days included in a vacation", within the meaning of section 8 of the Supreme Court Vacations Ordinance (Chapter 10). I cannot accept this contention. No doubt the word "public holiday" has been defined under section 2, but this appears to be only for the purpose of explaining the use of the word in section 4 (1), and section 9, and in each of those sections a sharp distinction is drawn between "vacation" and "public holiday". There is no reference to Sundays in this Ordinance.

Section 8 lays down that where "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".

The Holidays Ordinance (Chapter 135) enacts in section 4 that the several days mentioned in the second schedule shall in addition to Sundays, be *dies non*, and shall be kept, (except as provided in the Ordinance) as holidays in Ceylon. There is no section in this Ordinance such as section 8 of the Supreme Court Vacation Ordinance dealing with the computation of the time within which an act has to be done or a proceeding taken.

We are accordingly thrown back upon the Interpretation Ordinance (Chapter 2), section 8. In the computation of time, within which an act is to be done or a proceeding taken, it is only if the limited period does not exceed 6 days, that intervening Sundays and public holidays are to be excluded. Otherwise if the last day of the limited period falls on a Sunday or public holiday, the act will be regarded as properly done or the proceeding properly taken on the next day thereafter.

In the present case section 8 of the Interpretation Ordinance, has no application, and Mr. Nadarajah's argument on this point fails.

The next point urged by Mr. Nadarajah is based upon section 5 of the Order of the Supreme Court made under chapter 85, which is as follows:—

"A party who is required to serve any notice may himself serve it or cause it to be served, or may apply by motion in Court before a single Judge for an order that it may be issued by and served through the Court; and in the latter case he shall, within two days after obtaining the order, lodge in the Registry a notice in duplicate, prepared for the Registrar's signature and duly stamped. The notice may be served either on the party or on his proctor."

It is not in dispute that the motion of the appellant was filed in the Registry on August 14, which was in the circumstances within the fourteen days, but it was not brought before a Judge in Court until August 27, when it was allowed, and the notice was served on the same day on the respondent. This was after the fourteen days had elapsed. Mr. Nadarajah contends that under section 5 of the Order, it is a sufficient substitute for service of the notice if it is filed in the Supreme Court

Registry. But the section does not support him in this respect for it speaks of an application by motion *in Court before a single Judge*. There was no such application in this case until August 27. The section itself draws a distinction between a motion before a Judge in Court, and the lodging of a notice in the Registry.

I wish to make it clear that in dealing with this argument, I have refrained from deciding the question whether section 5 of the Order of the Supreme Court in fact modifies the language of rule 2 of the Schedule to chapter 85. I may point out that the requirement in the rule is that notice of the intended application has to be *given* to the opposite party within fourteen days.

Mr. Nadarajah's argument on this point also fails.

The application is dismissed with costs.

JAYETILEKE J.—I agree.

Application dismissed.
