

*Judgment of the Lords of the Judicial Committee of
the Privy Council on the Appeal of Johnson v.
Voight and Company from the Supreme Court
of Lagos ; delivered May 12th, 1896.*

Present :

LORD MACNAGHTEN.

LORD MORRIS.

LORD JAMES OF HEREFORD.

SIR RICHARD COUCH.

[*Delivered by Lord James of Hereford.*]

THE Appellant brought an action for an account against the Respondents, who had been his agents. He was admitted to sue *in formá pauperis*, and an account was taken. In the result the sum of 2,852*l.* 4*s.* 6*d.* was found due from the Appellant, and he was ordered to pay that sum to the Respondents.

The Appellant who is desirous of appealing complains that although he is entitled as of right to appeal to the full Court, terms have been imposed upon him which render that right nugatory.

By the Supreme Court ordinance (No. 4 of 1876) for the Colony of Lagos an appeal lies as of right from all final judgments where the amount in dispute is above 50*l.* The conditions on which appeals are to be admitted are set forth in Order LIII. of the Orders scheduled to the ordinance. Application for leave to appeal must be made within three months to the Court of first instance or within six months to the full Court. If the application is made to the Court of first instance the appeal is to be admitted on the Appellant paying a sum sufficient to cover the

[24.]

costs of making up the record and giving security for payment of the costs of the appeal. At the same time the Court is to say whether execution is to be stayed in the meantime or not, and the party in whose favour the Order staying or allowing execution is made has to give security. But the Order as to appeal is not dependent on compliance with the terms of the Order as to execution. The two Orders are in substance separate and distinct.

The Court of first instance has no power to depart from or vary the conditions prescribed by Order LIII. The full Court is in a different position. It has a discretion. It may give leave to appeal on such terms as it thinks just. It may dispense with security whether execution is stayed or not.

In the present instance the full Court has made leave to appeal dependent on security being given to the satisfaction of the Court for payment of the sum awarded by the Judgment which the Appellant desires to impeach. And it would appear from "the reasons" signed by the Chief Justice that this condition has been imposed in view of the merits or supposed merits of the case, which were not properly before the full Court and ought not, in their Lordships' opinion, to have been taken into consideration.

Assuming that the full Court may, under special circumstances, be justified in making the conditions of appeal more onerous than those prescribed where the application is made to the Court of first instance, it is obvious that to require an Appellant as a condition of admitting his appeal to give security for compliance with the Order proposed to be challenged by the appeal would in many cases render an appeal impossible. It must do so in all cases where the litigant desirous of exercising his right of appeal is a pauper.

Their Lordships are therefore of opinion that the Order of which the Appellant complains was not a proper exercise of the discretion committed to the full Court by Order LJIII.

In the result, therefore, their Lordships have arrived at the conclusion that justice will be done if the Appellant is allowed to prosecute his appeal before the Court of Appeal in the Colony upon the terms, not of giving security for the whole amount of the debt adjudged against him, but upon giving security only for the amount of the costs of that appeal. It is impossible for their Lordships to say what that amount should be, but the Order of the Supreme Court, seems to be an index as to what the fair sum would be. The Order mentions 20*l.* as the probable costs of the appeal, and 10*l.* as the costs of making up and transmission of the record of Appeal; and it seems to their Lordships that justice will be done if security be given for those two sums, making altogether 30*l.* The Order of the full Court will therefore be varied so that the sum of 30*l.* only should be given as security for costs.

Their Lordships will therefore humbly recommend Her Majesty to vary the Order of the Court below to that extent, and they make no order as to the costs of this Appeal.

