

By the express terms of Section 1 of that Act it is made clear that to entitle the endorsee of a Bill of Lading to have transferred to and vested in him a right of suit under the Act the circumstances under which the Bill of Lading has been endorsed must be such that the property in the goods has passed to the endorsee by reason of the endorsement. (*Fox v. Nott*, 30 L.J., Ex. 259). Here the Alexandria shippers, being only forwarding agents, had not the property in the goods. They could not consequently pass any right of action by virtue of their endorsement.

Appeal allowed.

TYSER, C.J.
&
BERTRAM,
J.

CARABET
NIVOGOSIAN
v.
THE
PHOCÉENNE
SS. Co.

[TYSER, C.J. AND BERTRAM, J.]

ZAPHIRIO MALAMATENIO,

v.

RATIB EFFENDI IRIKZADE.

TYSER, C.J.
&
BERTRAM,
J.
1907

April 30

PRACTICE—TIME FOR APPEAL—LEAVE TO APPEAL—EXTENSION OF TIME—
ORDER XXI, RS. 1, 7 AND 9.

Leave to appeal from a judgment of a District Court must be sought and obtained in time to allow the Appellant to lodge notice of appeal and serve copies on the parties within four months of the judgment.

The period of four months prescribed by Order XXI, r. 7 runs from the date of the pronouncement of the judgment.

This was an appeal of the Defendant from the judgment of the District Court of Paphos. The Respondent at the hearing of the appeal raised the preliminary objection that it was out of time.

The judgment was pronounced on 25th July, 1906, and was finally drawn up on 6th August, 1906. On 24th November, 1906 (one day before the expiration of four months from the date of the pronouncement of the judgment), the Defendant applied for leave to appeal. As the full Court could not be assembled on that date the hearing of the application was postponed, and leave to appeal was ultimately given on 4th December, 1906. Notice of appeal was lodged with the Registrar and a copy served on the Plaintiff on December 13th, 1906.

No copy of the order granting leave to appeal was lodged with the Registrar as required by O. XXI, r. 1, paragraph 2.

The material provisions of the rules referred to are as follows:—

O. XXI, r. 1 “Where an appeal is made by leave an office copy of the order granting the leave shall also be lodged with the Registrar.”

“Any appeal which is not made in conformity with the provisions of this Rule and any appeal a copy of the notice of which has not been served upon any Respondent within the prescribed time shall be dismissed when brought before the Court for hearing.”

TYSER, C.J.
&
BERTRAM,
J.

ZAPHIRIO
MALAMA-
TENIO
v.
RATIB EFF.
IRIKZADE

O. XXI, r. 7 "Every notice of appeal from the judgment of a District Court shall be lodged with the Registrar of that Court and a copy of it served on all parties affected by the appeal, within four calendar months from the day on which judgment was given."

O. XXI, r. 9 "The Court to which the appeal is made may at any time before the expiration of the times hereinbefore respectively limited for lodging and serving notices of appeal, on the application of any party affected by a judgment or order, and without notice to other parties, unless the Court shall otherwise direct, extend the time for lodging or serving a notice of appeal; provided that no such notice may in any case be lodged or served after the expiration of eight calendar months from the date of the judgment in the case of an appeal against a final judgment, or in any other case after the expiration of three calendar months from the date when the order became binding upon the person desiring to appeal."

Judgment: The Court has no power to entertain this appeal, the notice of appeal not having been lodged and served within four months from the day on which judgment was given as required by O. XXI, r. 7.

The four months referred to run from the date when judgment was pronounced, and not as contended from the date when it was finally entered or from the date on which leave to appeal was given.

Leave to appeal must be sought and obtained in time to allow the Appellant to comply with the formalities of Rule 1. If this is not done, any leave to appeal that may be obtained is inoperative.

No application to extend the time for appeal can now be entertained. The power of the Supreme Court in this matter is strictly limited by Rule 9 of the same Order which requires any such application to be made before the period of four months has expired.

The failure of the Appellant to lodge with the Registrar a copy of the order granting leave to appeal is also fatal.

The appeal must be dismissed.

We have no discretion in the matter. This is not a case in which the word "shall" may be construed as "may." The words of the Rule are imperative.

Appeal dismissed.