

23rd December, 1924.

ALFRED JAMES SHORUNKEH-  
SAWYERR and Another - - - Appellants.

v.

J. S. BISSETT - - - Respondent.<sup>1</sup>

*Power to grant leave of appeal to Privy Council in absence of evidence of value of matter in dispute—Rule 2a of Order of the King in Council of 15th February, 1909.*

The facts of this case are sufficiently set out in the judgment.

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Application for leave to appeal to His Majesty in Council from a judgment of the Full Court of Appeal.

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*A. J. Shorunkeh-Sawyerr and J. C. Shorunkeh-Sawyerr, the Appellants, in person.*

*Kempson for the Respondent.*

PRIOR, Acting J.

This is an application under rule 2 (a) of the Order-in-Council of February, 1909,<sup>2</sup> and the question as to whether it should be granted depends on whether this Court is satisfied that the matter in dispute is of the value of £300.

Mr. Sawyerr lays stress on his own statement on page 12 of the evidence in the Supreme Court, "My rough estimate of the value of the land is £300." It must, however, be remembered that this is the value of the whole four acres, which he states to be his, and that the alleged trespass is upon only a portion of the land.

Again, in his affidavit, he cites Mr. Abayomi Cole as having sold land near that in dispute at a date unnamed, at the rate of £60 an acre.

Objection is taken to Mr. Kempson's affidavit, which says that the land does not exceed £75 in value, on the ground that it is not confined to facts which the witness is able of his own knowledge to prove, and it is inadmissible, since this is not an interlocutory proceeding.

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<sup>1</sup> See p. 122.

<sup>2</sup> Vol. III, p. 767.

An interlocutory proceeding is one which does not finally determine the rights of the parties. Rule 28 of the Appeal Order-in-Council,<sup>1</sup> which enables Appellants to go direct to the Privy Council, may be urged in favour of the view that this petition *is* interlocutory in that it does not finally determine the rights of the parties.

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However, it is unnecessary to decide that point, since the evidence and the affidavit of the Appellant, so far from showing that his claim is £300 in value, goes to indicate that the alleged War Office encroachment, which is the subject matter of this action, is of substantially less value than that sum.

Mention has been made of the foundations of a house alleged to be upon the land, and described in Mr. Sawyerr's affidavit in reply "as a valuable basement of a stone building."

Nothing is said as to the value of this and, since the only erection shown on the plan is described as "Ruin," the Court cannot assume that it is of such a value as would bring the subject matter of the action up to the value of £300.

For these reasons the application must be dismissed with costs.

Mr. Sawyerr asked that this Court should record the fact that he applied to the Court for "special leave" to appeal. When making that request, however, Mr. Sawyerr intimated that he was aware that the application was one which this Court could not grant. In this connection it should also be stated that, so far as regards rule 2 of the Order-in-Council of February, 1909,<sup>2</sup> Mr. Sawyerr made it clear that he based his application for leave to appeal on paragraph (a) of that rule, and that he did not wish to base it on paragraph (b).

McDONNELL, Acting C.J.

I agree.

LEVY, Acting J.

I agree.

<sup>1</sup> Vol. III, p. 771.

<sup>2</sup> Vol. III, p. 767.