23rd December, 1924.

EDMUND ADOLPHUS COLLINGWOOD DAVIES
Appellant.

v.

McNEIL SAMUEL BROWN - - - *Respondent.*

and

McNEIL SAMUEL BROWN - - - *Appellant.*

v.

EDMUND ADOLPHUS COLLINGWOOD DAVIES
Respondent.[1]

Subject matter £300 *in value—Meaning of term "No order as "to costs" in Court of Appeal.*

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

Application for leave to appeal to His Majesty in Council from a judgment of the Full Court of Appeal dismissing an appeal from the judgment of His Honour the Chief Justice, given in favour of the Respondent Brown, and an application by the Respondent Brown relating to the incidence of the costs in the Full Court and in the Court below.

Ladepon-Thomas for first Appellant and the second Respondent.

A. J. Shorunkeh Sawyerr for the second Appellant and the first Respondent.

PRIOR, Acting J.

This is an application by the Appellant Davies for leave to appeal to His Majesty in Council from the decision of the Full Court dismissing an appeal from the judgment of His Honour the Chief Justice given in favour of the Respondent Brown.

In the action tried by the learned Chief Justice the Appellant claimed possession of certain lands at Pah Lokkoh, damages for alleged trespass and compensation for the alleged appropriation of seventy-five kola trees. There being no evidence before the Court that these subject matters of the action were of the value of £300 or upwards, the application must be dismissed with costs.

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[1] *See* p. 139.

The appeal of Brown versus Davies relates to the incidence of the costs in the Full Court and in the Court below.

In the action from which the appeal originated the learned Chief Justice gave judgment for the Appellant Brown with costs.

In the petition in support of his application for leave to appeal to His Majesty in Council, the Appellant Brown argues that the effect of the pronouncements of my learned brothers in the Full Court on the question of costs is to deprive him of the costs in the Full Court only, but contends that in the circumstances it was not within the discretion of the Full Court to deprive him of either costs in the Full Court or in the Court below. I do not propose to decide either of these questions.

In view of the fact that there has been no evidence before the Court as to the amount of the costs in the Court below, or in the Full Court, I am of the opinion that the application should be dismissed with costs.

McDONNELL, Acting C.J.

Although in his petition in this case the Appellant Davies' Solicitor states that the value of the land concerned is above the appealable value of £300, we have no evidence before us by affidavit or otherwise on that point, and the application must be dismissed with costs.

As to the application to appeal on behalf of Brown, which was consolidated with the other application under rule 15 of the Order in Council.[1] This, in effect, is aimed at securing an interpretation of the words which occur in my learned brother Lloyd's judgment:—

> " For the reasons given this appeal will be dismissed,
> " and in the circumstances no order will be made as to
> " costs;"

in my judgment:—

> " For these reasons I agree that each party must bear
> " its own costs both in this Court and in the Court below;"

and in my learned brother Sawrey-Cookson's judgment:—

> " This is a proper case in which the Court should make
> " no order as to costs,"

for *this* is the order in which those judgments were delivered, and not that in which they are set out in the applicant's petition where the extract from my judgment is placed last.

[1] Vol. III, p. 769.

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McDONNELL, ACTING C.J.

In plain English it is suggested that the majority of the Full Court was of opinion that the order as to costs in the Court below should stand.

Mr. Sawyerr relies upon Yeo *v.* Tatem, 40 L.J. Reports, Admiralty, p. 29.

This was an appeal dated 1871, and therefore heard before the Judicature Act was passed, from the High Court of Admiralty to the Privy Council, in which, as the headnote records, it was held that although an appeal will not be allowed in respect of costs only, yet " where there has been a mistake " upon some matter of law which governs or affects the costs, " the party prejudiced is entitled to have the benefit of correction " of appeal."

I cannot agree that a pre-Judicature Act decision on a point of practice such as this can be held applicable to an appeal under the Order in Council of 15th February, 1909, which limits a right of appeal to cases involving £300 or upwards, or to cases of great general or public importance.

In any event there is nothing to show what would be the amount of costs in this case.

Finally, can it be supposed that if I differed from my brother Lloyd as to costs I should have said " for these " reasons I *agree* that each party must bear its own costs, both " in this Court and in the Court below," or that my brother Cookson, if he differed from me, would have prefaced his assenting judgment with the words "I entirely agree "; and that, if he differed from my decision on the point, he would not have taken care to say so?

For these reasons I hold that this application must be dismissed with costs.

LEVY, Acting J.

I agree.