

R. v. P. J. de JAGER.

CRIMINAL APPEAL CASE NO. 36 OF 1935.

Application by the appellant for conditional leave to appeal to the Privy Council from a judgment of the High Court in its appellate (Criminal) jurisdiction—application must be made to the Privy Council.

This case decides that application for leave to appeal from a decision of the High Court in a Criminal matter must not be made to the local court (i.e., to the High Court of Northern Rhodesia), but to the Privy Council.

The Northern Rhodesia Order in Council has now been amended and an appeal from the High Court now lies in the first instance, as of right, to the Federal Supreme Court.

Francis, J.: This is an application by the appellant, Petrus Johannes de Jager, for conditional leave to appeal to the Privy Council from a judgment of this Court in its appellate jurisdiction affirming a conviction of the appellant before the Court of the Resident Magistrate, Ndola District.

The matter first came before this Court on the 29th July and the papers show that it was filed within the period prescribed.

It was then adjourned until the 12th August for the attendance before the High Court at Livingstone of one of the Crown Law Officers.

Through illness of the Judge, the Court was unable to sit on the appointed date, and the matter stood further adjourned until 26th August when, both parties being present, the motion was argued.

So far as appeal to the Privy Council is concerned, the Charter of Justice conferred on this Territory, is contained in Art. XXXI of the Northern Rhodesia Order, 1924.

The language in this article is clear, and purports to limit appeals in respect of civil matters only. The article is implemented by the Northern Rhodesia (Privy Council Appeals) Order, 1913, which, in Art. II expressed in common form, details (para. (a)) the right of appeal by grant and (para. (b)) the limitations to be observed by the local Court in entertaining applications for special leave to appeal in matters beyond those mentioned in para. (a). In coming to a determination on any such question, the Court is guided by principles laid down by the Privy Council.

I agree with learned Counsel in support of the motion that para. (b) contains an important delegation to this Court, but I am afraid that in the absence of some specific mention of, or even hint concerning the matter, which I have not been able to find, I am unable to follow his

submission that the expression "any other judgment" in para. (b) confers on this Court a power to entertain an application for leave to appeal in criminal matters.

It has been laid down that the Privy Council is not a Court of Criminal Appeal, but at the same time under Art. XXVIII of the Privy Council Appeals Order, a power is reserved to admit any appeal, in such circumstances as to the Board may seem proper.

In my view this is sufficient indication that where an aggrieved person seeks redress in any criminal matter his avenue of approach to the King in Council is not through the local Court, but direct to the Privy Council itself.

It is a matter of comment that from among the many criminal appeals dealt with by the Board, neither of the parties in this matter has been able to cite one instance where the petition for special leave to appeal was obtained from the local Court. On the contrary, from a number of cases consulted by me it would appear that criminal appeals have invariably been admitted "by leave of the Board".

For the reasons given the motion must be dismissed.

NOTE.—Leave to appeal having been refused by the High Court, the appellant petitioned the Privy Council. This petition was dismissed in the following Order in Council:

L.S.

AT THE COURT AT BUCKINGHAM PALACE THE 23RD DAY OF
NOVEMBER, 1937.

Present:

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 8th day of November, 1937, in the words following, viz.:

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October, 1909, there was referred unto this Committee a humble Petition of Peter Johannes De Jager praying for special leave to appeal to Your Majesty in Council from a Judgment of the High Court of Northern Rhodesia dated the 18th day of June, 1936, and pronounced in the matter of the conviction of the Petitioner by the Acting Resident Magistrate of the Ndola District of offences against the Penal Code of Northern Rhodesia:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the said humble Petition into consideration and having heard Counsel in support thereof Their Lordships do this day agree humbly to report to Your Majesty as their opinion that the said Petition ought to be dismissed."

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor or Officer administering the Government of Northern Rhodesia for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

M. P. A. HANKEY.