

Re NAHON and PARIENTE

Privy Council

24 November 1832

Privy Council — jurisdiction — no inherent power to grant leave to appeal.

Appeal — right of, to Privy Council.

A writ of ne exeat regno, an order for committal and a warrant of arrest were obtained against certain alleged debtors. They petitioned the Supreme Court and succeeded to the extent that the writ was quashed, the committal order rescinded and the warrant cancelled but it was ordered that they should personally “appear to the cause, and perform the exigency of the warrant of arrest.” They sought leave to appeal to the Privy Council against this order. It was argued on their behalf that the order amounted to a “final judgment, decree or sentence” or alternatively that the words of the Charter of Justice, 1830, preserved “the antient power, inherent at common law in the Crown, of granting leave to appeal from sentences, where it was not in the power of the Court below to have done so.”

Held: There was no power reserved to the King in Council to admit appeals other than those expressly mentioned in the Charter.

¹ An objection had been made that the appeal should not have been made from the judgment of the court below on the trial of the case, but that an application ought properly to have been made to that court for a new trial, and if they had refused to grant one, an appeal ought to have been instituted from their judgment on that occasion.

Note. The Charter of Justice, 1830, was repealed by the Supreme Court Consolidation Order, Gibraltar, 1888. The present right of appeal to the Privy Council is contained in s. 62 of the Constitution provided by the Gibraltar Constitution Order 1969. The following judgment is, however, printed as authority that there is no inherent power to grant leave to appeal.

Petition

This was a petition to the Privy Council for leave to appeal to the King in Council against an order of the Supreme Court.

The Master of the Rolls: The question for our decision is, not whether the rule or order of 23 August is right or wrong, but whether, under the words of the Charter of Justice of Gibraltar, the petitioners can be allowed to appeal from that order. Now, the words of that charter are, "that it shall be lawful for any person, being a party to any suit or action depending in the said Supreme Court, to appeal to His Majesty, his Heirs and Successors, in Council, against any final judgment, decree or sentence of the said Court, or against any rule or order made in any such civil suit or action, having the effect of a final and definitive sentence; and which appeals should be subject to the regulations therein mentioned," and those regulations are then set forth.

In a subsequent part of this charter, the King reserves to himself, his Heirs and Successors, in Council, "full power and authority, upon the humble petition, at any time, of any person or persons aggrieved by any judgment or determination of the said Supreme Court, to admit his or their appeal therefrom, upon such other terms, and upon and subject to such other limitations as He, his Heirs and Successors, should think fit." The former clause, therefore, allows suitors to appeal from final judgments, decrees or sentences of the Court, or orders or rules having that effect, subject to certain regulations. This latter clause reserves to the King in Council the power of admitting appeals, subject to other limitations and restrictions than those which were mentioned in the first clause, if they should think fit to do so; there is nothing, however, in the latter clause which reserves to the King in Council the power of admitting appeals from judgments or sentences of a different nature than those mentioned in the first clause. Can, then, this order of 23 August be considered either as a final and definitive judgment, decree or sentence, or even as a rule or order, having the effect of a final and definitive sentence, so that under the words of this charter an appeal can be allowed from it. I do not myself think it can be so, and the other members of the Council agree with me, that the prayer of this petition cannot be granted.