

[STRONGE, C.J., SERTSIOS AND FUAD, JJ.]

JOHN GILBERT SUTTON

v.

THE KING (No. 1).

1932.  
Oct. 15.—  
SUTTONv.  
THE KING  
(No. 1).

*Criminal Law—Conviction by Assize Court—Appeal to Privy Council—Cyprus (Appeal to Privy Council) Order in Council, 1927, Clauses 2 and 3.*

The appellant was convicted by the Assize Court, Limassol, of manslaughter and sentenced to six months' imprisonment. Upon appeal the Supreme Court upheld the conviction. On an application by the prisoner for leave to appeal to His Majesty in Council.

*Held:* (1) That the Supreme Court had no power to grant leave to appeal to the Privy Council in any criminal matter; (2) Clause 3 (b) of the Cyprus (Appeal to Privy Council) Order, 1927, does not apply to a criminal matter.

*Triantafyllides* for appellant.

*Solicitor-General* for the Crown.

The judgment of the Court was delivered by the Chief Justice.

JUDGMENT :—

STRONGE, C.J. : The applicant was convicted by the Assize Court, Limassol, of manslaughter and sentenced to six months' imprisonment. His appeal to this Court from that conviction was dismissed on the 15th of this month, and he now applies for leave to appeal to His Majesty in Council. The right of appeal to the Privy Council is governed by Clause 41 of the Cyprus Courts of Justice Order, 1927, and by Clause 3 of the Cyprus (Appeal to Privy Council) Order in Council, 1927. The first of these provides that in civil matters when the amount or value in dispute exceeds £300 an appeal shall lie from the Supreme Court to His Majesty in Council. The second gives a right of appeal as of right from any final judgment where the matter in dispute amounts to £300 or upwards, and, at the discretion of the Court, from any other judgment if the question involved is one of great general or public importance. By Clause 2 "Judgment" includes decree, order, sentence, decision. In this connection it is important to point out that the order regulating the right of appeal is prefaced by a recital "And whereas . . . it is provided that in civil matters . . . an appeal shall lie from the Supreme Court to His Majesty in Council . . ." Counsel for the applicant submits that, as "Judgment" is defined to include "sentence", and sentence being a judgment of a court in a criminal case, a right of appeal in criminal matters is conferred by the Appeal to the Privy Council Order. Such a contention is

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directly contrary to Clause 41 of the Courts of Justice Order which creates the right of appeal and limits it to civil matters. It further requires the Court to reject entirely the recital referred to above, and to hold that, while Rule 31 (a) dealing with judgments where the amount in dispute is £300 or above manifestly relates only to civil matters, Rule 3 (b) includes in addition criminal matters, because it allows an appeal with leave from any "Judgment" which by Clause 2 is made to include "sentence". In our opinion Rule 3 (b) relates to exactly the same class of cases as Rule 3 (a), *i.e.*, civil cases.

The precise point raised for determination in the present application has been decided by the Privy Council in the case of *Chung Chuck v. The King* (1). In this case the appellant was convicted under a local statute for unlawfully marketing potatoes. The Court of Appeal of British Columbia gave leave to appeal to the Privy Council. The Order in Council regulating appeals from the Courts in British Columbia is in almost identical terms with Rules 3 (a) and 3 (b) of the Order governing appeals from this Colony. The Lord Chancellor in delivering the judgment of the Judicial Committee said that it was perfectly clear that Rule 2 (a) (which corresponds to our Rule 3 (a)) refers to civil matters, and that the words "other" in the phrase "from any other judgment" in Rule 2 (b), 3 (b) of our Rules refers and relates back to the same sort of Judgments as those referred to in Rule 2 (a), that is to say, Judgments in civil cases. We are, therefore, clearly of opinion that under Clause 3 of the Cyprus (Appeal to Privy Council) Order, 1927, there is no right of appeal in any criminal cause or matter.

*Application dismissed.*