

IN THE COURT OF APPEAL

COLONY OF MONTSERRAT

CIVIL APPEAL NO.1 of 1973

BETWEEN · ALLEN ROWLAND DUTCHER Appellant
and
JOHN MACKINNON Respondent

Before The Honourable the Acting Chief Justice
The Honourable Mr. Justice E.L. St. Bernard
The Honourable Mr. Justice N.A. Peterkin

J.C. Kelsick for the appellant.
K.C. Allen for the respondent.

December 10, 1974

J U D G M E N T

LEWIS, C.J. (Ag.)

This is an application under Rule 27 of the Court of Appeal Rules for a further extension of time within which to file a record of appeal

Applications are frequently made under this rule for orders to be made by a single judge of this court, whereas, if the machinery provided by Rule 28 had been used instead, this would have resulted in a considerable saving in time and would have ensured a more expeditious hearing of the appeal. The court therefore thinks it appropriate to deal with the summons as though it were a motion so that its decision might be given in open court for the benefit of the profession as a whole, and it is hoped that practitioners will in future be guided thereby.

Rule 27 provides that in any cause or matter pending before the court a single judge of the court may upon application make an order for the matters therein specified. It is to be noted that a single judge of the court has jurisdiction only where the matter is pending before the court; that is to say, where the appeal has been brought by filing a notice of appeal.

Rule 28 provides that applications of the type referred to in Rule 27 shall ordinarily be made to a judge of this court, "but where this may cause undue inconvenience or delay, a Judge of the Court below may exercise the powers of a single Judge of the Court under that rule."

It follows, therefore, that in cases where a judge of the court below is available and a notice of appeal has been filed, a solicitor may apply to the judge of the court below to exercise the jurisdiction conferred on a single judge of this court by Rule 27. He does this by filing the application in the normal fashion addressed to a judge of this court together with a supporting affidavit showing the facts and circumstances which would cause undue inconvenience or delay if the application had to await the arrival in the territory of a judge of this court before it could be heard and in the affidavit the judge of the court below should be requested to exercise under Rule 28 the powers granted to a judge of this court. This procedure is particularly helpful and convenient especially in territories like Montserrat and the Virgin Islands where there is no resident Puisne Judge, but it is equally applicable in those states in which there is a resident judge.

Counsel for the respondent has indicated that he does not oppose the application. There will accordingly be a further extension of time to the 15th day of January 1975. Costs to be cost in the cause.

P. Cecil Lewis
Acting Chief Justice

E.L. ST. BERNARD, J.A.

I agree.

E.L. St. Bernard
Justice of Appeal

N. PETERKIN J.A. (Ag.)

I agree.

N.A. Peterkin
Justice of Appeal (Ag.)