

REPORTS OF CASES
DECIDED IN THE
SUPREME COURT OF
SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION).

1910.

G. A. FICHARDT & CO. v. FAUSTMANN.

1910. *June 1.* MAASDORP, C.J., and FAWKES and
WARD, JJ.

Appeal.—Sec. 16 of Ordinance 13 of 1904.—Date of a petition.

The date of a petition does not mean the date on which the Court is moved, but, *semble*, it means the date on which the petition is filed with the registrar of the Court.

The applicants had obtained leave on the 1st April to appeal to the Privy Council against a judgment of the late High Court of the Orange River Colony, subject to security for £1000 being furnished to the satisfaction of the registrar. Security was not furnished till the 1st June. The applicants asked for leave to appeal to the Appellate Division of the Supreme Court instead of to the Privy Council.

P. U. Fischer, for the applicants: See secs. 116 and 104 of the South Africa Act of 1909. Sec. 116 *ad fin.* reads: "All appeals to the King in Council which shall be pending at the establishment of the Union shall be proceeded with as if this Act

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had not been passed." The appeal is not pending in this case, because the security required as a condition of leave being granted to appeal to the Privy Council was not furnished till after the South Africa Act took effect. My contention is supported by the wording of sec. 16 of Ordinance 13 of 1904: "And if such last-mentioned security shall be completed within two months from the date of such petition for leave to appeal, then and not otherwise the said High Court shall allow the appeal. . . ."

[MAASDORP, J.P.: What is meant by the words "the date of such petition" in that section?]

The date on which the Court is moved.

Blaine, K.C., for the respondent, appeared to consent.

MAASDORP, C.J.: The only question we have to deal with is whether the petition was filed and security lodged within the time required by sec. 16 of Ordinance 13 of 1904. The security should have been lodged within two months of the date of the petition. The petition in this case was dated and filed with the registrar on the 24th March, and the security was not lodged till to-day. We have therefore no power to allow you to appeal, but it is open to you to apply to the Appeal Court for leave. There seems *prima facie* ground for saying that this matter was not actually "pending" in the Appeal Court within the meaning of sec. 116 of the South Africa Act, but I do not express an opinion on this point.

Applicants' Attorneys: *Gordon Fraser & McHardy*; Respondent's Attorneys: *Fraser & Scott*.

