

1895.
January 20.

MENIKHAMI GAMARALA *et al.* v. THE CROWN.

D. C., Chilaw, 256 B.

*Forest Ordinance, 1885—Amending Ordinance No. 1 of 1892, s. 9, sub-section 6
—Appeal from decision of Forest Settlement Officer—Procedure as to
lodging appeal and time for supplying stamp for judgment in appeal—
Civil Procedure Code, s. 756—Ordinance No. 3 of 1890.*

Per BURNSIDE, C.J., and WITHERS, J. (*dissentiente* LAWRIE, J.).—All that is required of a party appellant under section 9 of the Ordinance No. 1 of 1892 is to lodge with the forest officer, within three weeks of the order appealed from, a duly stamped petition of appeal and affidavit to enable him to have his appeal dealt with by the Supreme Court.

It is not necessary for the appellant to deliver, as provided in the Ordinance No. 3 of 1890, in the case of appeals from District Courts and Courts of Requests, a proper stamp for the decree or order of the Supreme Court.

But counsel for appellant should, before argument, undertake to supply the proper stamps for the judgment in appeal.

THIS was an appeal from a decision of a Forest Settlement Officer in favour of the Crown.

The claimant appealed, without supplying a proper stamp for the decree of the Supreme Court.

20th January, 1893. *Rāmanāthan, S.-G.*, for the Crown, submitted that the appeal was inadmissible without such stamp.

Seneviratana, for the appellant, was heard *contra*

Cur. adv. vult.

24th January, 1893. BURNSIDE, C.J.—

1893.
January 24.
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BURNSIDE,
C.J.

The decision of points growing out of the Forests Settlements Ordinances is not usually an easy task. The Ordinances themselves are novel in principle and abound in paradoxes, but the question for our decision in the present case is, in my opinion, free from doubt. It arises upon section 9 of the Forest Ordinance, No. 1 of 1892, which, after giving a right of appeal to this Court to any person dissatisfied with a decision of a forest officer by lodging a petition of appeal with an affidavit, of the nature of the right affected with that officer, goes on by sub-section (c) to enact :—“Stamp duty shall be charged upon every such petition of appeal and upon every such affidavit, at the rates specified in part II. of the schedule B to ‘The Stamp Ordinance, 1890,’ for similar instruments in the District Courts, and upon subsequent proceedings at the rates specified in the said schedule for appeals from the District Courts; and every such appeal shall be dealt with and disposed of in the same manner and subject to the same rules as appeals from District Courts are dealt with and disposed of.” It was contended by the Solicitor-General that the provision to the Stamp Act which relates to the time when the stamps necessary for judgments in appeal shall be supplied, governs appeals in these cases. The provision is as follows :—

“Provided also, that in appeals to the Supreme Court the appellant shall deliver to the secretary of the District Court or clerk of the Court of Requests, together with his petition of appeal, the proper stamp for the decree or order of the Supreme Court and certificate in appeal which may be required for such appeal.”

Whilst I am of opinion that a judgment in appeal is a “subsequent proceeding” within the sub-section of the Forest Ordinance, I am clearly of opinion that the provision just quoted does not apply to it. In the first place, by the Forest Ordinance it is clear that it is the stamp “rates” only which are made to apply to “subsequent proceedings,” and the provision to the Stamp Ordinance does not refer in any way to the “rates” to be paid, but it refers especially and only to the “time when” such rates are to be paid. Then, again, to hold that the provision applied to proceedings like the judgment in this case would be in effect to make the Legislature give a right of appeal in one breath and take it away in the next, for it would be impossible for an intending appellant to comply with the requirements of the provision. Which would be the District Court or the Court of Requests, to the secretary of which the stamps are to be delivered? It was

1898. suggested that the forest officer, or the registrar of this Court, would be officers corresponding to the secretary of the lower Court. But which would really be so? The very alternative is sufficient to dispose of that suggestion, which would in itself be simply legislating, and not construe legislation as we are called to do.

January 24.
LAWRIE, J.

I cannot appreciate the reasoning that because this Court has already held with respect to the provision, that it creates a condition precedent to the right of appeal in those cases to which the Legislature has in unmistakable terms applied it, therefore we must also apply it to other cases in which the Legislature has been silent with regard to it, and with the effect of defeating a right of appeal which has been also unmistakably conceded.

As I have said; I think the judgment would be a "subsequent proceeding," and it should therefore be stamped in the words of the Ordinance "at the rates specified in the schedule for appeals from the District Court," but as the Ordinance has made no special provision as to the time when such stamp shall take place the general law must apply, and the judgment would strictly and properly be stamped at the time when other judgments are really stamped. I fully recognize, however, the inconvenience, if no greater evil, of leaving a judgment to be stamped after it shall have been delivered, without any provision for securing the supply of the proper stamp, and although the Legislature has been silent on that matter, it has by sub-section (b) of the same section of the Ordinance given this Court full power to obviate the inconvenience by empowering the Court, after the appeal has been forwarded to our Court, "to make such order as the justice of the case may require." I am prepared, therefore, to permit this case to be heard in appeal, upon the undertaking of counsel that the proper stamps for the judgment in appeal shall be supplied; and in all future cases the order will be that no appeal will be received until a similar undertaking is given by counsel.

LAWRIE, J.—

The 9th section (sub-section 6) of the Ordinance No. 1 of 1892 provides that the rates of stamp duties specified in the schedule for appeals from the District Courts shall be charged on proceedings subsequent to the petition of appeal for appeals from a decision or order of a Forest Settlement Officer, and that such appeals shall be dealt with and disposed of in the same manner, and subject to the same rules as appeals from District Courts are dealt with and disposed of.

The judgment of this Court in appeal is of necessity a proceeding subsequent to the petition of appeal. The section I have quoted, in my opinion, requires that that judgment shall bear the same stamp as it would bear if it were a judgment in appeal from a decision of a District Court. The appellants have not up to this moment supplied any stamps for the judgment in appeal. In my opinion, we must deal with the omission as if this case were an appeal from a District Court. If an appellant from a District Court judgment omitted to furnish stamps for the judgment of this Court, we would reject the appeal. I am of opinion that no other course is now open to us. I would reject the appeal.

1898.
January 24.
WITHERS, J.

WITHERS, J.—

To my mind there is little doubt that all that is required of a party appellant under the 9th section of Ordinance No. 1 of 1892 is to lodge with the forest officer within three weeks of the order appealed from, a duly stamped petition of appeal and affidavit to entitle him to have his appeal dealt with by this Court as appeals from the District Courts are dealt with.

The provisions of the 756th section of the Civil Procedure Code cannot be worked into section 9 of Ordinance No. 1 of 1892, for this relates only to what shall occur after the transmission of the proceedings to this Court.

Then, as to the provision of the Stamp Ordinance which anticipates the usual time for stamping instruments by requiring the proper stamp for the judgment of this Court to be delivered with the petition of appeal to the secretary of the District Court, I cannot find the language which incorporates it into the 9th section of Ordinance No. 1 of 1892, which, in regard to proceedings like this judgment, subsequent to the receipt of the case by our Registrar, declares only the rates of duty to be imposed on them, and no more.

It is left to us, as pointed out by my Lord, to make such order in matters incidental to proceedings in appeal under this Ordinance as the justice of the case may require, and I venture to think the order proposed a just application of a very ordinary requirement.