

[IN THE PRIVY COUNCIL.]

1945 *Present* : Lord Thankerton, Lord Goddard and Sir John Beaumont.*The Supreme Court of the Island of Ceylon, No. 61 of 1944.*KARUNAPEJJALAGE BILINDI *et al.*, Appellants, and WELLAWA ATTADASSI THERO, Respondent.*Appeal—Party added to an action—Proxy given to same Proctor as appeared for other defendants—Judgment for plaintiff—Petition of appeal filed by the Proctor on behalf of all—One petition and one stamp—Civil Procedure Code, ss. 754 and 755.*

In the course of an action an application was made to add a necessary party, who elected to be represented by the same proctor as the other defendants and to abide by the same answer. After judgment was given for the plaintiff all the defendants filed the same petition of appeal and one notice of appeal was given on their behalf by the proctor who was acting for them all.

Held, that there was one appeal in the case and that the petition of appeal rightly bore one stamp.

Held, further, that the case of *Supper et al. v. Muttiiah et al.* (14 C. L. Weekly 70) was wrongly decided.

Quære whether it is open to the Supreme Court, once the petition of appeal has been accepted by the Court of first instance, to take or give effect to an objection as to the sufficiency of the stamp or whether by the combined effect of sections 756 and 839 of the Civil Procedure Code it may not be possible for a *bona fide* mistake as to the stamp required to be remedied and thus to avoid a miscarriage of justice.

A PPEAL from a decree of the Supreme Court.

November 19, 1945. LORD GODDARD—

This is an appeal from a decree of the Supreme Court of the Island of Ceylon dismissing an appeal by the appellants from a decree of the District Court of Kurunegala on a preliminary objection. The objection which the Supreme Court upheld was that there was only one petition of appeal before the Court whereas it was said that there were in truth two appeals and as the petition bore a stamp sufficient to cover only one it was not properly stamped and the Court was bound not to proceed upon it but to dismiss the appeal. In support of their judgment the Supreme Court cited two cases, *James v. Karunaratna*¹ and *Supper and another v. Muttiiah and another*² with both of which their Lordships will deal in this judgment.

The action out of which this appeal arose was one of ejection and was originally brought by the present respondent against the present appellants 1 to 11. They were all represented by the same proctor, who duly filed a proxy showing that he was acting for them. During the course of the proceedings, in consequence of the answer filed by them it appeared that appellant No. 12 was interested in the property in question and was therefore a necessary party to the action, and accordingly an application was made to the Court to add him as a defendant to the suit, and this

¹ (1935) 37 N. L. R. 154.² (1939) 14 Ceylon Law Weekly 70.

was granted. He elected to be represented by the same proctor, Mr. Gomis, who appeared for the other defendants, and who was then directed to file his proxy and answer. This was done and the Court journal records that "the added defendant abides by the answer of the defendant already filed". Judgment was given in the action for the plaintiff and all the defendants decided to appeal; as has already been stated one notice of appeal was given on their behalf by Mr. Gomis who was still acting as proctor for them all. The Stamp Ordinance, Cap. 189 of the Legislative Enactments of Ceylon, requires that a petition of appeal should be stamped according to the value of the amount involved in the appeal. The Civil Procedure Code, which is Cap. 86 of the Enactments, provides by section 754 that every appeal to the Supreme Court from any judgment, decree or order of any original court, shall be made in the form of a written petition and that the petition shall be presented to the Court of first instance for this purpose by the party appellant or his proctor within certain periods. By section 755 all petitions of appeal shall be drawn and signed by some advocate or proctor, or else the same shall not be received, and this section contains a proviso, immaterial for present purposes, designed to help appellants in person. There is nothing in either of these sections or in the Stamp Ordinance which prevents parties all of whom have the same interest and who appear by the same proctor from giving one notice of appeal; there is only one appeal in such a case, not as many appeals as there are appellants. This was recognised by the Court in the first of the two cases above mentioned in which Koch J. referred to "the accepted practice that two or more persons who sign a joint proxy in favour of a proctor to represent them can be treated for the purpose of pleadings and the appeal as constituting one party". In their Lordships' opinion this is not a matter in which one need have recourse to some accepted practice; the fact is that in such a case there is one appeal and one only. In that case however the defendants had severed in their defences and had employed two different proctors. Both those proctors had signed the notice of appeal which only bore one stamp. In such a case it may well be said that there were two appeals because the defendants were not acting jointly but severally. It was sought in the present appeal to say that this case applied because appellant No. 12 had been brought in as an added party. But once he was brought in his position was the same as though he had originally been made a defendant and as he had given a proxy to the same proctor and had adopted the defence of the other defendants their Lordships are unable to see how it can be said that he was in any different position to any one of the other eleven. He was acting jointly with them and there was never more than one appeal. The case of *Supper v. Muttiiah* already referred to was in their Lordships' opinion wrongly decided and must be overruled. The facts were not the same as in the case in 37 N. L. R. 154 because the appellants were not appearing by different proctors. It was argued in the present case that there was no joint proxy, apparently because the added defendant gave his proxy at a different time to the others. That is a fallacy; as soon as he gave his proxy to the proctor who was acting for the others and threw in his lot with them by adopting their defence he became a joint defendant with them for all purposes. As this is enough to dispose of this appeal

their Lordships do not propose to express any opinion as to whether it is open to the Supreme Court, once the petition has been accepted by the Court of first instance, to take or give effect to an objection as to the sufficiency of the stamp, nor as to whether by the combined effect of sections 756 and 839 it may not be possible for a *bona fide* mistake as to the stamp required to be remedied and thus perhaps avoid a miscarriage of justice. They say no more than that both points appear susceptible of considerable argument and that it would be an unfortunate and probably unintended result of the Stamp Ordinance if a litigant should be debarred from an appeal on a ground which is from a practical point of view capable of easy remedy without injustice to anyone. Their Lordships will humbly advise His Majesty that this appeal should be allowed with costs and the case be remitted to the Supreme Court with a direction to hear and determine the appeal.

Appeal allowed.
