

Present: Wood Renton J. and Grenier J.

1911.

AIYAR v. TAMBYAH *et al.*

D. C. Jaffna, 6,965.

Appeal in forma pauperis—No security required—Civil Procedure Code, ss. 756 and 778.

A litigant who has been allowed by the Supreme Court to appeal *in forma pauperis* need not furnish security as a condition precedent to his appeal being forwarded.

THE facts are set out in the judgment.

Bawa (with him *Rutnam*), for plaintiff, appellant.—It would be practically denying a pauper the right of appeal if security was insisted upon. If an appellant could not pay for the stamps, a *fortiori* he could not give security.

Under the English law in such cases security is not required. *Biggs v. Dagnall*,³ *Wille v. St. John*.⁴

Balasingham, for the defendants, respondents.—The only concession to which the appellant is entitled is that he has the right, by virtue of the order made under section 778 of the Civil Procedure Code, to file his appeal without stamps. Section 778 expressly refers to stamps. It cannot be said that the Legislature did not

¹ 8 All. 377.

² (1904) 1 K. B. 6.

³ (1895) 1 Q. B. 208.

⁴ (1910) 1 Chancery 701.

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consider the question of security. The provisions as to giving of security contained in section 756 applies to all appellants, including paupers. Special reference is made in that section, and in the form No. 128, Schedule II., to appeals by paupers; yet no concession is given to them with respect to costs. Section 778 gives a concession as to stamps only. The question of security cannot be considered a *casus omissus*.

The present appellant was assisted by several others in the conduct of his case; when he applied for leave to appeal he was represented by two counsel, to whom he had paid fees. The Supreme Court referred the application to the District Judge, to find out if he was actually a pauper. The District Judge had reported that he had friends assisting him, in his litigation. Under these circumstances, he is not entitled to appeal without giving security (*Jogendra Deb Roykut*¹).

If the English law is to be applied, it must be applied in its entirety. Under the circumstances of this case, the appellant would be dispaupered under the English law. See English "Rules of the Supreme Court, 1883," order 16, rule 28.

The waiver of stamps is a concession by the Crown; but to deprive the respondents of their security would be to harass them. The appellant has had the luxury of a litigation in the District Court. Counsel also referred to *Rodrigo v. Fernando*.²

Bawa, in reply.

Cur. adv. vult.

December 15, 1911. WOOD RENTON J.—

The question involved in this application is whether or not a litigant who has been allowed by the Supreme Court to appeal *in forma pauperis* from a judgment of the District Court can be required to furnish security as a condition precedent to his appeal being forwarded. The Supreme Court order is silent on the matter of security. But the learned District Judge has declined to forward the appeal until security has been given, on the ground that there is no provision in the Civil Procedure Code which enables him to dispense with it. No local authority under the Code of Civil Procedure itself was cited to us on either side in argument. It was held, however, as far back as 1838, under the rules of practice then in force, in the case of *Rodrigo v. Fernando*,² that a party who has been admitted to sue *in forma pauperis* cannot be called upon to give security for costs. "To require security," said the Judges who decided that case, "for an adversary's costs from a person who has proved that he has not the means to pay his own were to deprive the pauper at the outset of all relief from any injustice." So far as I have been able to ascertain, it has never been the practice in Ceylon to require security from pauper appellants. The English practice

¹ 18 W. R. 102.

² (1838) *Morgan's Digest* 231.

under the Judicature Acts and the Rules of Court is the same. "I cannot think," said Wright J. in the case of *Biggs v. Dagnall*,¹ "that the right of appealing *in forma pauperis* can be made subject to the limitation of giving security for costs; for if it were, the practical result would be that a pauper could never appeal." See also on the same point *Wille v. St. John*.² In the absence of any such provision on the points in the Civil Procedure Code, I would follow the case of *Rodrigo v. Fernando*³ and the English decisions just referred to.

This application should, in my opinion, be allowed, and the District Judge should be directed to forward the applicant's appeal without security.

GRENIER J.—

I agree. The practice, so far as I am aware, has always been not to require security from a pauper when he has been granted leave to appeal. A pauper would be remediless, however good a case he might have, if any such condition were imposed. I do not think that the Civil Procedure Code, either expressly or by implication, repealed the practice above referred to.

Application allowed.

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