

1919.

Present: Ennis A.C.J. and De Sampayo J.

NONAI et al. v. APPUHAMY et al.

94 and 95—D. C. Nuwara Eliya, 401.

*Appeal—Stamps for decree of Supreme Court and certificate in appeal—
Time for tendering.*

The proviso in the schedule to the Stamp Ordinance, that in appeals to the Supreme Court the appellant shall deliver to the Secretary, . . . together with his petition of appeal, the proper stamp for his decree or order of the Supreme Court and certificate in appeal which may be required for such appeal, does not make it imperative that the appeal should be rejected if such stamps are not tendered at the same time as the petition of appeal.

THE facts appear from the judgment.

Bawa, K.C. (with him Hayley), for the appellants.

A. St. V. Jayawardene (with him Samarawickreme), for respondents.

August 26, 1919. ENNIS, A.C.J.—

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There are two appeals in this case, and the last time they came up for hearing this Court sent the case back to the District Judge, so that he might furnish particulars with regard to the time when the stamp for the certificate in appeal was tendered to the District Court. It now appears that in appeal No. 95 the stamps for the certificate in appeal were tendered long after the filing of the petition of appeal; in fact, after the Registrar of the Supreme Court had noticed the absence of any certificate in appeal and of any stamp. Counsel for the appellant in case No. 94 assures us that appeal No. 94 covers the same ground as appeal No. 95. In the circumstances, appeal No. 95 can abate for want of prosecution.

With regard to appeal No. 94, a long argument has been addressed to us based on a proviso found in the schedule of the Stamp Ordinance, which reads: " 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. "

It was urged that this was an enactment of civil procedure, by which it was imperative that stamps should be tendered at the same time as the petition of appeal, and that otherwise the appeal should be rejected. The object of the Stamp Ordinance was primarily for the protection of revenue, and I am not myself convinced that it was the intention of the Legislature to introduce a detail of civil procedure in the proviso to the schedule of the Ordinance, a procedure which in no way affected the revenue one way or the other. It is quite possible, as my brother has suggested in the course of the case, that the words " together with " found in that proviso did not necessarily refer to coincidence in time, but that they may be construed as meaning " in addition to. " However, on the second point, even assuming that this were an enactment of civil procedure, which requires stamps to be tendered at the same time as the petition of appeal, I have the gravest doubts with regard to the incidence of the cases which have been cited in support of the contention that a failure to tender stamps at that time should entail as a necessary consequence the dismissal of the appeal. The first of these cases was *Cornalie v. Ukkua*.¹ That case was decided before the present Civil Procedure Code was enacted and under an old Stamp Ordinance. That case appears to have been decided on the ground that the stamp must be given within the time limited by the rules for perfecting an appeal. Exactly what rules are referred to I do not know. Whatever the time for perfecting the appeal may have been, it would seem a matter of inference that it is not the time

¹ (1863-68) *Ram*. 278.

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of the presentation of the appeal, but some later date. The next case referred to was the case of *Don Mathes Bandara v. Babun Appu*.¹ We have referred to the Minutes of the Supreme Court with regard to this case, and find that it first came before two Judges on November 8, 1892, and then stood out for the appearance of counsel. On November 16, 1892, the case was on the list again, and the Supreme Court Minutes show that on that occasion three Judges were sitting. The Minutes contain merely a brief record by the Registrar that the appeal was rejected, with costs, because stamps for the Supreme Court judgment were not supplied in time. There is nothing to indicate that this brief dismissal of the case was the considered act of three Judges, and that it was meant as a decision of the Full Court. The fact that it was adjourned by two Judges, in the first instance, for the appearance of counsel, would indicate that it was, in fact, not intended to be a Full Court case. Be that as it may, the record does not show the real grounds upon which the formal order was made, because it is quite possible to have used the same words where the Court acted to check a tendency to present documents being presented without the proper stamps, and not necessarily to indicate that in no case would the Court allow a mistake or omission to be corrected. There is nothing in the Civil Procedure Code which acts as a bar by limitation similar to the provisions of section 756 relating to security and the deposit of money to cover the expense of serving notice of appeal, and there have been a number of cases since 1892 in which time has been allowed to correct a deficiency, where it was a question of revenue only and not of limitation. The unreported case, S. C. 17—D. C. Galle, 15,764, merely followed the case of *Don Mathes Bandara v. Babun Appu*,¹ under the impression that it was a Full Court case binding this Court on this particular point. The case of *Salgado v. Peiris*² has also been mentioned in connection with this point. But there it was a question of stamp on a petition of appeal in insolvency, and the Court held that it had no power to allow the petition to be stamped after the time for filing had expired. So that in that case any question of time to set right an omission was barred by the expiration of the time limit for appeal. It, therefore, does not affect the present question. On the law, therefore, I think that in this case, as the certificate of appeal was stamped before it left the District Court, the preliminary objection should be overruled. Apart from that, however, it would seem that the question of fact upon which the objection was taken is by no means clear. The Secretary of the Court apparently is under the impression that stamps were not given before the date of filing the petition of appeal or on that date. We have an affidavit from one of the proctors for the appellant that he had handed stamps for the Supreme Court judgment and the certificate in appeal to the Secretary of the

¹ *Matara Cases* 203.² (1909) 12 N. L. R. 379.

District Court at the time he filed the petition of appeal. The doubt alone as to that fact is sufficient to make it necessary to grant an indulgence in this case, where there is no definite law barring the appeal for non-compliance with the provisions of the Stamps Ordinance. I would, therefore, over-rule the preliminary objection in appeal No. 94.

DE SAMPAYO J.—I agree.

Objection over-ruled.

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