

*Present:* Mr. Justice Wendt and Mr. Justice Wood Renton.

1908.  
October 13.

SINGER MANUFACTURING CO. *v.* PAUL PERERA.

*P. C., Hatton, 6,279.*

*Appeals in criminal cases—Petition of appeal signed by proctor without proxy—Validity—Criminal Procedure Code, ss. 287, 336, 337, 338, 340 (1), 441.*

Where the complainant in a Police Court case appealed with the sanction of the Attorney-General from an acquittal of the accused on certain counts, and the petition of appeal was signed only by the proctor who appeared for the complainant in the Police Court, but who held no proxy from the complainant authorizing him to sign such petition of appeal,—

*Held* (over-ruling the objection to the hearing of the appeal), that the petition of appeal was in order, and that the appellant was entitled to be heard.

WENDT J.—No proxy is required in a criminal case, and District Court proctors are qualified to sign petitions of appeal in criminal cases.

**A**PPEAL from an acquittal with the sanction of the Attorney-General. The petition of appeal was signed by the Proctor only, who held no proxy authorizing him to do so.

Counsel for the accused-respondent objected to the hearing of the appeal on the ground that the appeal was not properly before the Court, as the proctor had no authority to appeal.

Wendt J. reserved the question for consideration by two Judges.

*H. J. C. Pereira*, for the complainant, appellant.

*A. St. V. Jayewardene*, for the accused, respondent.

*Cur. adv. vult.*

October 13, 1908. WENDT J.—

The question reserved by me for the consideration of a Bench of two Judges was whether the petition of appeal of the complainant, being signed only by Mr. Liesching, a proctor of this Court, as proctor for the petitioner, was regular. While section 287 entitles every person accused before a Criminal Court to be defended by a "pleader," no similar right is conferred upon a complainant. In practice, however, complainants are often represented by a proctor, or an advocate instructed by a proctor. Subject to certain conditions as to amount of sentence and otherwise contained in sections 335, 336, 337, the right of appeal to the Supreme Court is given by

October 13. section 338 to any person dissatisfied with any judgment or final order pronounced by any Police Court or District Court in a criminal case or matter to which he is a party. Section 336 enacts that there shall be no appeal from an acquittal, except at the instance or with the written sanction of the Attorney-General. Section 340 (1) directs that every petition of appeal shall be signed by the appellant or his proctor. The present is an appeal sanctioned by the Attorney-General against the acquittal of the accused on the charge of criminal breach of trust in respect of two sums of Rs. 20 and Rs. 5 paid to him by one Tillekeratne. The appeal of the accused against his conviction on another charge tried at the same time has already been disposed of.

WENDT J.

In objecting to the complainant's appeal, counsel for the accused cited *The Queen v. Genis Appu*,<sup>1</sup> in which Bonser C.J., in sending back for the signature of the accused-appellant a petition of appeal signed only by a proctor, is reported to have said that as an accused was liable to have his punishment enhanced in appeal, the petition should have been signed by the accused, or else it should appear on the record that the proctor was specially authorized to sign it. From the later remarks of the learned Judge it would appear that he considered that the authority should be contained in a written proxy. The report does not state whether the proctor had appeared for the accused at the trial. On July 3, 1900, the day following the order in that case, the Registrar of this Court, apparently acting on the order of the Chief Justice, issued to all the Magistrates and District Judges the following circular:—

“ I am directed to invite your attention to section 340 (1) of the Criminal Procedure Code, which provides that every petition of appeal shall be signed by the appellant or his proctor.

“ Cases have recently come under the notice of the Supreme Court where the petition was not signed by the appellant himself, but merely purported to be drawn by a proctor of the District Court.

“ Such a petition of appeal is altogether irregular, and should not be accepted and forwarded to the Supreme Court.

“ I am to request you to reject in future every petition of appeal preferred to this Court which is not either signed by the accused himself, or by a proctor of the Supreme Court expressly authorized by the appellant to sign a petition of appeal on his behalf. The proxy giving this authority to the proctor should be filed with the record and transmitted to this Court.”

At the argument we were given to understand that the Circular had not been uniformly acted upon, although in some instances proxies had been sent up with petitions of appeal. It will be noticed that the Circular says nothing about appeals by complainants, and the reason mentioned by Bonser C.J. in his order, viz., the liability

<sup>1</sup> (1900) 1 *Browne* 59.

to enhance punishment, does not apply to such appeals. In *Podi Sinno v. Punchi Sinno*<sup>1</sup> Lawrie J. expressed himself as follows:—  
 “ I am doubtful of the propriety of requiring a proctor for accused-appellants to file a proxy. I think proctors are entitled to appear in Criminal Courts on verbal or informal written retainers, and may sign petitions of appeal, and that proxies are necessary only under the Civil Procedure Code. If a proctor appear for an accused in a criminal case, and says he is a proctor, and signs his name as proctor, I am prepared to accept his statement as true, having confidence that proctors, who have been admitted and have sworn to do their duty, will not mislead the Court. ”

Mr. Jayewardene, for the accused, sought to argue that the circular might be regarded as a rule prescribing a form, and made under section 441 of the Criminal Procedure Code, but that argument fails for lack of proof that two Judges concurred in making it. In my opinion the circular cannot be given effect to. Proxies have never been required in criminal cases. The Legislature when enacting the new Criminal Procedure Code, with knowledge of this fact, refrain from making proxies obligatory. When, therefore, section 340 speaks of the appellant's proctor, we must take it to mean the person who at the time of the passing of the Code would have been regarded as his proctor. When a proctor has appeared for a party, and been recognized as such in the Court below, I think he should be regarded as authorized to file in that Court a petition of appeal on behalf of his client. By analogy with the practice in the Civil Courts, I think it makes no difference that the proctor is a proctor of the District Court and not a proctor of the Supreme Court. My learned brother and I have thought it proper to consult the Chief Justice, and we are authorized to say that he concurs in holding that the complainant's appeal is in order, that no proxy is required in a criminal case, and that District Court proctors are qualified to sign petitions of appeal.

WOOD RENTON J.—

I think that the appeal in this case must be received as in order. The dictum of Bonser C.J. in *1 Browne 59*, in my opinion, is not defensible under the law as it stands. The circular of July 3, 1900, is not a “ rule ” within the meaning of section 441 of the Criminal Procedure Code, and is of no legal force or authority.

*Preliminary objection over-ruled.*

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WENDT J.