1936 *Present* : **Macdonell C.J. and Poyser J.**

DE SILVA *v.* HASSANALLY.

126—D. C. (Inty.) Galle, 33,930.

Plaint—Insufficiently stamped—Accepted by Court—Objection raised by defendant—Deficiency supplied by plaintiff—Plaint made good.

Where a plaint insufficiently stamped is accepted by the Court and the plaintiff, on an objection raised by the defendant, supplied the deficiency of stamp duty,—

***Held*, that the irregularity was cured and that the action should not be dismissed.**

Jayawickreme v. Amarasooriya [2] **followed.**

APPEAL from an order of the District Judge of Galle.

C. V. Ranawake (with him *S. W. Jayasuriya*), for plaintiff, appellant.

L. A. Rajapakse, for first defendant, respondent.

[1] *15 C. L. Rec. 5.*

[2] *17 N. L. R. 174.*

March 11, 1936. MACDONELL C.J.—

This was an appeal from an order of the District Court striking out the plaint lodged by the plaintiff in a section 247 action on the ground that it was insufficiently stamped. The facts were these. The plaintiff, intending to bring a section 247 action, filed his plaint on March 14, 1935, admittedly within the fourteen days allowed by that section, and it is common cause that the plaint was insufficiently stamped at that time. The plaintiff took out summons. Thereafter on July 10, 1935, the proctor for the first defendant moved that the plaint be rejected on the ground that it had been insufficiently stamped and notice was given to the plaintiff for the argument of this matter a week hence, July 17. On July 16 occurs the following entry in the journal. The proctor for plaintiff "tenders stamps of the value of Rs. 9 being deficiency of stamp duty and moved that the same be accepted. Stamps cancelled and affixed". The inquiry was duly held and the learned Judge on the authority of the decision in *British Corporation v. United Shipping Board* [1]—this has now been confirmed by the three Judge decision in *Attorney-General v. Karunaratne* [2]—held that he could not draw a distinction between a petition of appeal and a plaint, since the statute required both of them to be properly stamped and to be filed within a prescribed time. He held therefore that the decision in 36 N. L. R. 225 governed the matter, and dismissed the plaintiff's action. From this decision the appeal is brought.

The law on the subject of stamping plaints is to be found in two sections of the Civil Procedure Code. Section 39 says, "Every action of regular procedure"—this will include a section 247 action—"shall be instituted by presenting a duly stamped written plaint", and section 46, after giving the reasons for which the Court may in its discretion refuse to entertain a plaint, goes on to say that "(*h*) Where the relief sought is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff on being required by the Court to supply the requisite stamps within a time to be fixed by the Court fails to do so . . . . the plaint shall be rejected". It will be seen from the facts in this case that the plaint when presented was not duly stamped as section 39 requires it to be, and that the plaintiff did not wait to be required by the Court to supply the necessary stamp within the time fixed by the Court but tendered the right stamp *sponte sua*. Strictly it is not a case which the Code has provided for. This requirement about stamps on pleadings is one in the interests of the revenue and the party must pay for such stamp as the revenue requires. When he has affixed such stamp to his pleading, it will be receivable, unless the law says that he has been too late in affixing the stamp. Now the portion of section 46 which has been quoted above, read in conjunction with section 39, shows that a plaint insufficiently stamped when presented is not incurably bad, but that the Court can give the person bringing the plaint a time limit within which to stamp it properly, and there can be no doubt that if the person presenting it does stamp the plaint within the time given him by the Court, the plaint becomes a perfectly good one. We can put it this way. If the plaintiff puts himself right with the

[1] *36 N. L. R. 225.*

[2] *37 N. L. R. 57.*

revenue on the orders of the Judge his plaint becomes good; is it reasonable to say that he should be in a worse position if he does not wait for the orders of the Judge but puts himself right with the revenue of his own mere motion? Clearly it is not reasonable to say that he should in such a case be in a worse position. I would say then on principle, and interpreting these two sections in what seems to be a reasonable way, that in this case the plaintiff's plaint was good and that his action should not have been dismissed.

It would seem, however, that apart from such an argument on the interpretation of the two sections in question, there is a decision, *Jayawickrama v. Amarasooriya*[1] which is binding upon us. It is a two-Judge decision and in it Pereira J. says, at page 175, as follows:— "In the case, however, of a plaint or answer being accepted *per incuriam*, that is to say, as the result of an inadvertent omission on the part of the Court to consider the question of the sufficiency of the stamp thereon, it may be that before any step in the regular course of procedure is taken by the opposite party the Court may return the pleading to be properly stamped; but this question need not be considered on this appeal, because we have no information from the District Judge that the plaint in this case was accepted by him *per incuriam*, and no order returning the plaint was, in fact, made before the filing of the answer. When a Judge, having considered the question of the sufficiency of stamp duty, has accepted a plaint or answer, or has accepted it having inadvertently omitted to consider the question, the remedy, if indeed any exists, can only be by means of such action as the Attorney-General, as representing the Crown, to which all stamp duties are a debt, may be deemed to be entitled to take. It will be embarrassing to both the parties to any action and lead to disastrous results, if, for instance, at a very late stage of the action a pleading can be thrown out for default of either party to make good any deficiency in stamp duty". With this judgment Ennis J. agreed, though he was not at one with Pereira J. as to the latter's interpretation of section 37 of the Stamp Ordinance. That disagreement does not, however, it seems to me, militate against the authority of the judgment since it is quite clear that Ennis J. agreed with the portion of the judgment of Pereira J. which has been set out above. In that case it is not very clear whether the plaint had been properly stamped at any time; here the plaint was properly stamped on July 16, 1935, and apparently the facts here are more in the plaintiff's favour than those in the case *Jayawickrama v. Amarasooriya* (*supra*). On the evidence in the present case it looks as if the learned Judge did accept the plaint when the stamp was put upon it, and that having done so, it was too late for him thereafter to reject the plaintiff's action. But however that may be, the case *Jayawickrama v. Amarasooriya* (*supra*) quoted above does seem an authority that a plaint is not *ipso facto* bad because the stamp was not put on when the plaint was tendered and authority also that the plaint can be properly stamped at a later time, even though the Court has not made order under section 46 (*h*) but the plaintiff has affixed the stamp of his own motion. That at least seems to be a conclusion that follows from the judgment.

[1] *17 N. L. R. 174.*

With all respect, the judgment below went wrong in holding that the very strict rule as to stamping appeals to be found in section 755 also holds good with regard to plaints. I do not think that it does, and for this difference you can suggest a perfectly good reason. A man can only appeal when there has been a pronouncement of a Court against him. The presumption is that that pronouncement is right and it is not unnatural therefore that the law should impose a strict rule upon a person maintaining that that pronouncement against him is wrong. But there is not the same presumption against a person presenting a plaint which is the initial stage of litigation and earlier than any pronouncement.

For the foregoing reasons I am of opinion that this appeal must be allowed with costs, and the plaintiff's action reinstated to be deemed to have been filed on March 14, 1935; costs below to be costs in the cause, save for the costs of the inquiry on July 24, 1935, which the plaintiff should have in any event.

Poyser J.—I agree.

Appeal allowed.