

[FULL BENCH.]

1909.
November 25

Present : The Hon. Sir Joseph T. Hutchinson, Chief Justice,
Mr. Justice Middleton, and Mr. Justice Grenier.

SALGADO v. PEIRIS.

D. C., Negombo, 84.

Appeals in insolvency cases—Cannot be stamped after the appealable time had expired—Civil Procedure Code, ch. LVIII.

A petition of appeal in insolvency cases must bear a stamp of Rs. 2·50 at the time it is presented to the Court. The Court has no power to allow it to be stamped after the time for appealing has expired.

THE petition of appeal in this case was presented unstamped within the appealable time, and when it came to the Supreme Court, the Registrar drew the attention of the appellant to the fact that the petition was not stamped. The petition was subsequently stamped, after the appealable time. At the hearing of the appeal the respondent took the objection that the appeal was not perfected within the appealable time. The question was reserved for the consideration of a Full Bench.

Tambyah (with him *Cooray*), for respondent.—The petition of appeal was not stamped within the appealable time. Under the Stamp Ordinance, Schedule B, Part V., a petition of appeal in an insolvency case has to bear a Rs. 2·50 stamp. [MIDDLETON J.—Does the Civil Procedure Code govern appeals in insolvency proceedings ?] Yes; section 754 begins, “Every appeal to the Supreme Court.” The ruling in *In re Abdul Azis*¹ is only a ruling on the question of security.

Samarawickrama (with him *B. F. de Silva*), for the appellant.—Even if the Civil Procedure Code governs appeals in insolvency cases, section 755 does not require written petitions of appeal to be stamped at the time they are presented to Court. [GRENIER J.—The Secretary cannot receive a petition of appeal without stamps.] Under section 34 of Ordinance No. 3 of 1890 a petition of appeal could be stamped even after the appealable time. Counsel relied on *In re Abdul Azis*.¹

¹ (1895) 1 N. L. R. 196.

1909. *Tambyah*, in reply.—Section 34 of Ordinance No. 3 of 1890 applies
 November 25. to Part II. of Schedule B. A petition of appeal is provided for in
 Part V. of Schedule B.

Cur. adv. vult.

November 25, 1909. HUTCHINSON C.J.—

This is an appeal against an order made under the Insolvency Ordinance, No. 7 of 1853. The petition of appeal was filed in the District Court in due time, but was not stamped until after the time for appealing had expired. The question is whether the stamping of such a petition is a condition precedent to its being received.

A stamp duty of Rs. 2·50 is imposed on petitions of appeal under the Insolvency Ordinance by Part V. of Schedule B to the Stamp Ordinance, No. 3 of 1890. There is a provision in section 34 of the Stamp Ordinance for stamping certain instruments which do not bear the proper amount of stamp duty, but it does not apply to petitions of appeal. And there is also a provision in section 63 of the Insolvency Ordinance for the stamping of documents which are by that Ordinance required to be stamped, and which have been through mistake or inadvertence filed without a stamp; but that does not apply here, because no stamp is required by that Ordinance on these petitions of appeal.

By section 6 of the Insolvency Ordinance appeals under that Ordinance are to be “subject to such regulations as now exist or shall hereafter be made by any rule or order of the Supreme Court.” There were regulations then in force, but they were expressly repealed by the Civil Procedure Code. No rules or orders have been made by the Supreme Court affecting these appeals.

In my opinion the effect of the Stamp Ordinance is that a petition of appeal in insolvency cases must bear a stamp of Rs. 2·50; that the Court is bound not to accept it unless it is so stamped; and that the Court has no power to allow it to be stamped after the time for appealing has expired.

MIDDLETON J.—

In this case it is objected preliminarily that no appeal has been duly presented. The ground for the objection is that the petition of appeal was not stamped at the time it was presented and received by the Secretary of the Court.

It was laid down in *1 N. L. R. 196* by a Full Court judgment that chapter LVIII. of the Civil Procedure Code did not apply to appeals made from orders under the Insolvency Estates Ordinance, No. 7 of 1853. The judgment in that case seems, however, to ignore the definition of an action in section 6 of the Civil Procedure Code. The question whether this is not a manifest mistake or oversight (*Rabot*

*v. Silva*¹), which entitles this Court to over-rule that decision, is one that, I think, should be answered in the affirmative. If so, the decision in *9 S. C. C. 120* would stand revived, which holds that the Civil Procedure Code applies to appeals in insolvency cases.

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The rules made in 1833 and 1843 were all expressly repealed by the Civil Procedure Code of 1889, and by section 6 of Ordinance No. 7 of 1853 the Judges of the Supreme Court might make rules for the better carrying of the Ordinance into effect and regulating the practice of the District Courts; but no such rules have been made, for this reason probably that it was not deemed necessary to do so.

I think the Legislature impliedly repealed the last paragraph of section 6 of Ordinance No. 7 of 1853 by making the Civil Procedure Code applicable by inference to insolvency cases, and would hold that chapter LVIII. does govern appeals from the Courts in insolvency cases.

It is contended that under section 63 of the Insolvency Estates Ordinance a document such as a petition of appeal might be stamped with the leave of the Court subsequent to presentment, but the objection to this contention is that the document mentioned in that section is a document which by the Ordinance itself is required to have a stamp impressed on it, and a petition of appeal is not one of the documents mentioned in the Ordinance as requiring a stamp.

Again, it is further contended that under section 34 of the Stamp Ordinance, No. 3 of 1890, the Judge might order the petition of appeal, as he has done here, to be stamped after it is tendered in the case, but that section only applies to pleadings or instruments specified in Part II., Schedule B, of the Ordinance, and a petition of appeal in insolvency proceedings is not one of the instruments mentioned in that schedule. In addition to this, that section appears to apply to the case of instruments insufficiently stamped, and not to such as are wholly unstamped. The part of the Stamp Ordinance, No. 3 of 1890, which applies to petitions of appeal in matters of insolvent estates under Ordinance No. 7 of 1853 is Part V., Miscellaneous. This ordains a stamp fee of Rs. 2·50.

As this stamp fee was not on the petition of appeal at the time it was presented, I think we must hold that the appeal was not duly presented according to law, and the preliminary objection must succeed.

GRENIER J.—

In addition to the reasons given by my Lord and my brother Middleton for holding that the stamping of a petition of appeal is a condition precedent to its being received, I may say that in my experience, both at the Bar and on the Bench of the District Court, appeals in insolvency cases have been treated on the same footing

¹ (1907) 10 N. L. R. 140.

1909. as those in interlocutory matters. The Secretary of the District
November 25. Court of Colombo has never yet to my knowledge accepted a
GREENER J. petition of appeal in an insolvency case unless it was properly
stamped at the time of presentation, according to the provisions
contained in chapter LVIII. of the Civil Procedure Code.

I have never known of any case where such a petition of appeal
has been allowed to be stamped at any time subsequent to the date
of presentation. There has been an uninterrupted practice for
nearly twenty years at least, from the time the Civil Procedure Code
came into operation, of stamping petitions of appeal in insolvency
cases, and then presenting them to the Court through the Secretary.
It would lead to much confusion and delay if this practice was now
altered, and the appellant given liberty to stamp his petition of
appeal whenever he liked.

Appeal dismissed.
