

1948

Present: **BASNAYAKE J.**

THOMAS, Appellant, and CEYLON WHARFAGE CO., LTD.,
Respondent

S. C. 151—Workmen's Compensation Appeal C 30/6102/46.

Workmen's Compensation—Appeal—Point of law only—Must point of law be certified?—Criminal Procedure Code, section 340—Workmen's Compensation Ordinance, sections 48 and 51.

The effect of section 51 of the Workmen's Compensation Ordinance is to make the provisions of section 340 of the Criminal Procedure Code applicable to appeals under that Ordinance.

A PPEAL under the Workmen's Compensation Ordinance.

H. Wanigatunga, for the appellant.

D. W. Fernando, for the respondent.

Cur. adv. vult.

June 22, 1948. **BASNAYAKE J.**—

This is an appeal under the Workmen's Compensation Ordinance (hereinafter referred to as the Ordinance) by the injured workman. Under section 48 of that Ordinance an appeal lies on a point of law only. Learned counsel for the respondent submits that, in the petition of appeal, the point of law is not stated and certified in the manner required by section 340 (2) of the Criminal Procedure Code (hereinafter referred to as the Code). He therefore asks that the appeal be rejected. If section 340 (2) of the Code applies to an appeal under section 48 of the Ordinance, learned counsel's contention is entitled to succeed.

Appeals to this Court under the Ordinance are regulated by Part X thereof. Section 48 (1) of the Ordinance gives the right of appeal on a point of law, but it does not say how that right is to be exercised. Section 49 contemplates the existence of a petition of appeal, for it provides that every petition of appeal should bear uncanceled stamps to the value of Rs. 5 and should be filed in the Supreme Court within a period of thirty days reckoned from the date of the order against which the appeal is preferred. There is no special provision in the Ordinance itself which prescribes how the petition of appeal should be drawn up and authenticated, but section 51 declares that subject to the provisions of Part X of the Ordinance, the provisions of Chapter XXX of the Code shall apply *mutatis mutandis*, in regard to all matters connected with the hearing and disposal of an appeal preferred under section 48.

The question is whether the words "in regard to all matters connected with the hearing and disposal of an appeal" are wide enough to make section 340 of the Code applicable. The words are in my view wide and far-reaching. It would appear from the observations of Clauson L.J. in the case of *University Motors Ltd. v. Barrington*¹, that the word "hearing" is itself an expression susceptible of a very wide meaning in certain contexts. The remarks of Lord Selborne in *Green v. Lord Penzance*² illustrate the wide scope of the expression. He says:

"There are various things to be done by him under the Act before the hearing and preparatory to it: orders as to evidence, orders as to attendance of witnesses, notices, orders for the production of documents. Technically those are not a part of the hearing, but I entertain no doubt whatever that those things and every other thing, preliminary and antecedent to the hearing, are covered by and are included in the authority to 'hear', which I consider means to hear and finally determine 'the matter of the representation' which I consider to be equivalent to the cause,—the whole matter. Those antecedent things are in my judgment within that authority, and the 'hearing' within the meaning of these words does not appear to me to terminate till the whole matter is disposed of; therefore it includes not only the necessary antecedents, but also the necessary or proper consequences."

In the present context the word "hearing" which by itself is capable of including "not only the necessary antecedents, but also the necessary or proper consequences" is further enlarged by the words "all matters connected with". These words have the effect of extending the scope of the expression "hearing"³. They are in my view designedly used by the Legislature so as to apply all such provisions of Chapter XXX of the Code as are necessary for the proper presentation and hearing of an appeal under the Ordinance. Any other construction would be an undue restriction of the scope of section 51. There is nothing in the Ordinance to indicate that the Legislature intended that the lay appellant should perform the well-nigh impossible task of formulating, for the decision of this Court, points of law arising in his case. A petition of appeal under section 48 of the Ordinance should in my opinion not only contain a statement of the matters of law to be argued but it also must bear a certificate by an advocate or proctor that such matter of law is a fit question for adjudication by the Supreme Court. An appeal under the Code on a matter of law which does not comply with the requirements of section 340 (2) cannot be entertained unless the case is one that falls under the proviso to the section. This appeal does not conform with the requirements of the Code and must therefore be rejected.

Appeal rejected.

¹(1939) 1 *All E. R.* 630, at 632.

²*L. R.* 6 *App. Cas.* 657.

³*Re Davies* (1932) 49 *T. L. R.* 5.