

1934

*Present : Macdonell C.J. and Dalton J.*RAMALINGAM PILLAI *v.* WIMALARATNE.

231—D. C. Kalutara, 341.

*Appeal—Failure to supply stamps for certificate of appeal—Fatal irregularity.**Failure to supply, along with the petition of appeal, stamps for the decree of the Supreme Court and certificate in appeal is a fatal irregularity.***A** PPEAL from a judgment of the District Judge of Kalutara*H. V. Perera, for defendant, appellants.**M. T. de S. Amerasekere, for plaintiff, respondent.*

September 3, 1934. MACDONELL C.J.—

This is a question of a certificate of appeal not having been stamped in time and whether the appeal should in consequence be struck out. The provisions of the Stamp Ordinance, No. 22 of 1909 (Vol. II., p. 946), seem to be peremptory. They say that the appellant shall deliver to the Secretary of the District Court, 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. I do not think it is necessary to construe the words "together with" as meaning "in addition to" (see *Nonai v. Appuhamy*¹). They are quite clear as they stand, and, even if they are so construed, their simplest meaning would be that there shall be simultaneously delivered with a certificate of appeal, the stamp required for same.

There are a number of cases supporting the proposition that without a stamp, a certificate of appeal cannot be received. The case cited to us, *Nonai v. Appuhamy* (*supra*), was really a decision on the facts and can be distinguished, whereas the case *Sathasivan v. Cadiravel Chetty*² seems to be directly in point. There is also the Full Bench decision in *Don Mathes Bandara v. Warnasuriya Patabendige Babun Appu and others*³. The reasons given in that Full Bench case are short, but the decision is perfectly clear. The District Judge informed the Supreme Court in a letter that the appeal had been filed on the 25th of a month and the stamp on the certificate of appeal not furnished until the 26th, i.e., one day afterwards, and the Court thereon made order "upon reading the letter of the District Judge, that the appeal filed in the action by the plaintiff be and the same is hereby rejected with costs, stamps for the Supreme Court judgment and the certificate in appeal not having been supplied at the same time". I take it we are bound by that judgment.

I may perhaps also mention the judgment delivered last May by my brother Garvin and myself where there were two appeals and the proctors for the appellant had stamped them with stamps as for one appeal only, where both of us held that the petition of appeal and the accompanying documents must be rejected on that ground. There it was not a question of time, but one of the sufficiency of the stamps tendered, and possibly that decision is *a fortiori* to the one now before us. I think the appeal before us should be rejected, the respondent to have the costs of this application.

DALTON J.—I agree.

Appeal rejected.

¹ 21 N. L. R. 170.

² 21 N. L. R. 93.

³ 1 *Matara Cases* 203.