

Present: Wood Renton J.

APPUHAMY v. BRAMPY.

428—C. R. Pasyala, 4,786.

Retrospective effect of a statute—Stamp Ordinance, No. 22 of 1909, s. 36, has no retrospective effect—Promissory note made in 1903—Insufficiently stamped—Deficiency may be supplied and action maintained.

Statutes are not to be held to act retrospectively unless a clear intention to that effect is manifest, or the matter in issue relates to procedure alone.

Section 36 of the Stamp Ordinance, No. 22 of 1909, is not retrospective, and cannot deprive a holder of an insufficiently stamped note, made before the Ordinance came into force, of his right to maintain an action on the note after supplying the deficiency of stamp duty under section 35 of the old Stamp Ordinance.

THE facts appear sufficiently from the judgment.

A. St. V. Jayewardene, for the plaintiff, appellant.—At the date of the making of the note the plaintiff had to get the note properly stamped by the Commissioner of Stamps and then sue upon the note. That right is not affected by the new Stamp Ordinance, as section 36 has no retrospective effect. See *Mazwell on the Interpretation of Statutes*.

V. Grenier, for the defendant, respondent.—The old Stamp Ordinance conserves the rights created by the previous stamp laws; but the Stamp Ordinance of 1909 has no provisions to that effect. The new Stamp Ordinance has, therefore, retrospective effect.

The note sued upon was invalid even under the old law. The right to supply deficiency was not open to plaintiff under the present circumstances even under the old law. [Wood Renton J. referred counsel to *Saibu Tamby v. Musa Naina*.¹] In that case the provisions of section 19 were not considered. [Wood Renton J. referred counsel to *Coluraad v. Rogee*.²] Even under the old law the deficiency cannot be supplied after fourteen days.

A. St. V. Jayewardene, in reply.—The Interpretation Ordinance conserves the rights which had accrued under the old law. A series of decisions under the old Ordinance has established the right of a holder of an insufficiently stamped note to have it properly stamped at any time.

Cur. adv. vult.

¹ (1904) 3 Bal. 56.

² (1902) 7 N. L. R. 20.

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January 20, 1913. WOOD RENTON J.—

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The plaintiff-appellant sued the defendant-respondent for the recovery of a sum of Rs. 300 on a promissory note which was dated January 15, 1903, and which was insufficiently stamped. The respondent contended that, in view of the provisions of section 36 of the Stamp Ordinance, 1909 (No. 22 of 1909), as the note was insufficiently stamped it was invalid, and could not be sued upon. The learned Commissioner of Requests has given effect to this contention, and has dismissed the appellant's action. If section 36 of Ordinance No. 22 of 1909 is applicable, this decision is clearly correct. But under section 35 of the Stamp Ordinance, 1890 (No. 3 of 1890), which was in force at the time when the promissory note was made, but which was repealed by the Stamp Ordinance of 1909, it would have been competent for the appellant to have supplied the deficiency of the stamp duty payable upon the promissory note and to have thereafter maintained his action upon it. The appellant contends that section 36 of Ordinance No. 22 of 1909 is not retrospective, and cannot deprive him of a right vested in him at the time when the promissory note was made. The principle of law upon which the decision of questions of this kind turns is clear. The only difficulty is to apply it to the circumstances of particular cases. Statutes are not to be held to act retrospectively unless a clear intention to that effect is manifest, or the matter in issue relates to procedure alone. (See *Colonial Sugar Refining Company v. Irving*.¹) The respondent's counsel did not argue that the right of the holder of an insufficiently stamped promissory note to supply the deficiency in the stamping and thereafter put it in suit involved a matter of procedure alone, and I do not think that such an argument would have been tenable. He urged, however, in the first place, that section 35 of the Stamp Ordinance of 1890 did not apply to promissory notes, and, in the next place, that, even if it did, the right created by that section was taken away by necessary intendment by the language of section 36 of Ordinance No. 22 of 1909. It is, in my opinion, too late now to contend that the group of sections in the Stamp Ordinance, 1890, to which section 35 belongs, do not include promissory notes (see *Rosling v. Saverimuttu*,² *Coluraad v. Rogee*,³ and *Saibu Tamby v. Musa Naina* ⁴), and I do not think that the language of section 36 of Ordinance No. 22 of 1909 is strong enough to support the argument that it was intended to have a retrospective effect.

I set aside the decree under appeal, and send the case back to the Court of Requests. If the appellant shall, within a time to be fixed by the Court, supply the deficiency of the stamp duty payable on the promissory note in suit, the case will proceed to trial on the

¹ (1905) A. C. 369.² (1892) 1 S. C. R. 311.³ (1902) 7 N. L. R. 20.⁴ (1904) 3 Bal. 56.

pleadings and on the issues to be framed thereunder. The appellant will be entitled to the costs of the appeal and of the argument in the Court of Requests. All other costs will be costs in the cause. In the event of the appellant not supplying the deficiency in the stamp duty payable on the note as above mentioned, the appeal will stand dismissed with the costs of the action and of the appeal.

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Sent back.
