

1897.  
May 28.

MATTHES v. ROTTAN.

C. R., Tangalla, 1,253.

*Appeal—Leave under s. 13 of Ordinance No. 12 of 1895—Refusal of leave by Commissioner—Rules as to giving security, &c., in appeal.*

Where the Commissioner of a Court of Requests has once refused an application under section 13 of Ordinance No. 12 of 1895 for leave to appeal, he is *functus officio* as to such refusal, and cannot reconsider it and grant leave.

The rules in the Civil Procedure Code as regards the time of admission of petitions of appeal, the time and mode of making the necessary deposits, and giving security in Courts of Requests, must be observed in appeals under Ordinance No. 12 of 1895.

THE facts of the case appear in the judgment.

*Bawa*, for appellant.

*Van Langenberg*, for respondent.

28th May, 1897. WITHERS, J.—

Respondent's counsel took certain preliminary objections against the appeal from the judgment of the Court below, and I think those objections are entitled to succeed.

The two principal objections were these. In the first place, the aggrieved party applied to the Commissioner for leave to appeal from the judgment; and his application was expressly disallowed.

That being so, it was urged that the would-be appellant should within seven days from the date of that refusal have submitted to the Supreme Court a written application by petition for leave to appeal (see section 13.(2) of Ordinance No. 12 of 1895). This admittedly was not done. It appears, however, from the record that the Commissioner re-considered his former decision and allowed the petitioner to appeal. He was *functus officio*, and the applicant's only recourse was to the Supreme Court in the way above indicated.

But it seems that arguable questions of law were present in the judgment from which the aggrieved party desired to appeal, so that he had a right to appeal on matters of law—a right expressly reserved to him by the Ordinance No. 12 of 1895, section 13.

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The petition eventually admitted was admitted within the time allowed by the Code of Civil Procedure.

If all the subsequent conditions required by the Civil Procedure Code had been fulfilled the appeal would have been in order and open to no objection.

But it so happens that the security bond was not perfected within the time prescribed for Courts of Requests by the Civil Procedure Code. Now, section 786 of that Code enacts that “when a petition of appeal has been so received, but the petitioner has failed to give the security as is in this section provided, then the petition of appeal shall be held to have abated.”

The petition having abated, I do not see how I can entertain the appeal.

Mr. Bawa endeavoured to meet this objection by contending that as the Ordinance No. 12 of 1895 had laid down no rules of procedure for the conduct of appeals on matters of law “or on the admission or rejection of evidence,” or “with the leave of the Commissioner,” appeals from Courts of Requests, where the right of appeal is expressly reserved by this Ordinance, were governed by no definite rules or conditions. But I have before expressed the opinion that the amending and extending Ordinance must be read with the governing Ordinance No. 2 of 1889, so far as this can be done consistently with the provisions of the later Ordinance, and I see nothing inconsistent with it in observing the rules in the Civil Procedure Code as regards the time of admission of the petition of appeal and the time and mode of making the deposit and giving the security in the Court of Requests. The appeal must be dismissed with costs.

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