

H. A. PAGE et al., Appellant, v. **Z. A. JACKSON**, Appellee.

RE-ARGUED FEBRUARY 17, 1911. DECIDED FEBRUARY 24, 1911.

Toliver, C. J., Wood and McCants-Stewart, JJ.

1. An error committed by the clerk of the trial court in transcribing the records on appeal is not ground for the dismissal of the appeal.
2. An instrument is valid and admissible in evidence, which is stamped with a postage instead of revenue stamp, if the denomination of such stamp be as required by law.

Mr. Justice McCants-Stewart delivered the opinion of the court: Cancellation of Lease—Motion to Dismiss Appeal. This is a cause in equity, which was commenced by appellants for the purpose of securing the cancellation of a lease given by them to defendant. The cause was tried before the Court of Quarter Sessions and Common Pleas of Montserrado County, sitting in equity, and a decree entered in favour of the defendant. Whereupon an appeal was taken to this court.

Counsel for appellee now moves that this appeal be dismissed on the ground that "there does not appear in the copy of the records filed in this honorable court by the appellants that there was any stamp attached to the bond filed in this case, which omission renders said bond null and void."

It was stipulated between counsel on the argument that a ten cent postage stamp is affixed to the appeal. bond. Counsel for appellee now contends that such a stamp is not in compliance with the law, the same not being a revenue stamp. Counsel for appellant contends that as the Stamp Act is to raise revenue, the law is complied with if any Government stamp is used.

This court is not inclined to look favorably upon technical points, which do not go to the merits of a controversy. A court of last resort should deal with the principles underlying every issue brought before it. Causes properly on the calendar of this court should be heard speedily and fully, and should be

disposed of upon their merits. No suitor should be turned away until this is done.

This is a cause in equity involving grave issues and somewhat large interests and there should be such an adjudication of it as will appear to be just and equitable.

Now, it is conceded that the appeal bond was stamped with a postage stamp when filed with the clerk of the court below. His failure in copying the records to mark on the copy of the appeal bond the place of the stamp should not be allowed to prejudice appellant's cause, as an error committed by the clerk of the trial court in transcribing the records on. appeal is not ground for the dismissal of the appeal.

Upon an examination of the Stamp Act, we are of the opinion that an instrument is valid and admissible in evidence, which is stamped with a postage instead of a revenue stamp, if the denomination of such stamp be as required by law.

The Stamp Act was passed for the purpose of increasing the revenue. The suggestion for such a law emanated from the Postal Department, and was urged upon the ground that it would increase the postal revenue. In his annual message to the Legislature, dated December 15, 1904, His Excellency President Barclay said: "The Postmaster General is exceedingly anxious to place the service on the same footing in all parts of the country; but he is hampered by want of funds. The state of the public finances will not admit of any large sum being spent on the service out of revenue from other sources. I hope that the Legislature will, after ten years solicitation, pass the Stamp Act, constantly suggested since 1894" (page 8). And His Excellency in his annual message to the Legislature dated December 11, 1906, dealing with the affairs of the Postal Department, said, among other things :

"The Postmaster General having made the necessary preparations, the Stamp Act went into force at the beginning of July. This Act will be very helpful as it affords a revenue" (page 10).

Now, the Act provides that certain documents (bonds being among them) shall be subjected to a stamp duty to be paid by the holders of such documents (sec. 1) ; that no documents of the nature of those enumerated in the Act shall be deemed valid, or be received in evidence in courts of justice, unless properly stamped in accordance with the above schedule (sec. 2) ; that the Postmaster General shall supply the officers whose duty it is to issue any of the above named documents with a sufficient quantity of revenue stamps to be sold to the public, the Act providing that ordinary postage stamps may be used as revenue stamps until the latter could be procured (sec. 3).

These are all of the provisions of said Act pertinent to the issue at bar. From them it can be seen, that there is no mandatory provision requiring the use of revenue stamps only in connection with the documents enumerated in the Act. The provision that postage stamps may be used as revenue stamps until the latter could be procured does not go far enough to make it unlawful to use a postage stamp even after revenue stamps are in circulation. The two classes of stamps were provided for as a convenience for the keeping of the accounts of the Postal Department and for the purpose of ascertaining annually the amount of revenue produced by said Act. If it was the intention of the Legislature to invalidate an instrument and to deny it admission in evidence because it is stamped with a postage instead of a revenue stamp, it would have provided in express terms for such a result.

It cannot be reasonably contended, that if at some point remote from the central postal office there should arise a need for a revenue stamp, and there should be none on hand for sale by any stamp agent, that an instrument would have to be executed and delivered without a stamp. This would be contrary to the spirit of the law, which is intended to increase the revenue; and an instrument "is properly stamped" if it has affixed thereto any Government stamp of the amount required by the Stamp Act. The phrase in the Act, "unless it is properly stamped in accordance with the above schedule," means that the amount of the stamp must comply with the rate fixed for the particular instrument under consideration.

This motion, therefore, must be denied, and the cause continued for the term : and it is so ordered.

C. B. Dunbar, for the motion.

T. W. Haynes, opposed.