

AMEEN AND OTHERS  
v.  
MALSHIP (CEYLON) LTD.

SUPREME COURT  
WIMALARATNE, J., RATWATTE, J., AND SOZA, J.  
S.C. NO. 91/81.  
CA/LA/NO. 92/81(SC) - CA/LA/113/81  
D.C. COLOMBO NO. 1893/SPL.  
MAY 21, 1982.

*Stamp duty - Should an application for leave to appeal be stamped?*

**Held -**

That as sub-head A of Part II of the Schedule of the Stamp Ordinance does not provide for stamping of applications for leave to appeal or notices of appeal no stamp duty is necessary for leave to appeal or notices of appeal. The levy of stamp duty is governed by the letter of the law and not by its spirit.

**Cases referred to:**

1. *Partington v. Attorney-General (1869) IV English and Irish Appeals (H.L.) 100, 122*
2. *Tennant v. Smith (1892) A.C. 150, 154.*

**APPEAL from order of Court of Appeal**

*P. Somatilakam* for petitioners-appellants.  
*Douglas Premaratne, D.S.G.* (appears as *Amicus Curiae*).

*Cur. adv. vult*

June 15, 1982.

**SOZA, J.**

The only point raised in this appeal is whether an application for leave to appeal should be stamped. The Court of Appeal has held that such applications should bear class stamps.

At the time the Stamp Ordinance was passed in 1909, the Civil Procedure Code No.2 of 1889 was in force. Under the provisions of this Code a party aggrieved by "any judgment, decree or order of any original court" could file a petition of appeal to the Supreme Court - see section 754(1). Whether the appeal was from a final judgment, decree or order or from an interlocutory judgment, decree or order, the provision was for filing a petition of appeal. In its Schedule A Part II the Stamp Ordinance enumerated the stamp duties payable on law proceedings. For the civil proceedings in District Courts itemised under sub-head A of this Part the stamp duties payable were set out. Item 19 refers to petitions of appeal as being liable to stamp duty varying in value according to the scale set out against this item. As notices of appeal and applications for leave to appeal were not steps in procedure prescribed by the statute as it stood then, there is no reference to them.

On 1.1.1974 the Administration of Justice Law, No.44 of 1973 came into force. By section 3(1)(b) of this Law sections 753 to 778 of the Civil Procedure Code were repealed. Henceforth appeals to the Supreme Court against any judgment of an original court were to be lodged by giving a notice of appeal (sections 317(1) and 318) while appeals from an order made by an original court in the course of any civil action, proceeding or matter were possible only with the leave of the Supreme Court first had and obtained upon an application for leave to appeal (sections 317(2) and 326(1)). Sections 323(1) and 326(1) of the Administration of Justice Law stipulate that a notice

of appeal and an application for leave to appeal respectively had to bear a stamp of the prescribed denomination. Although there was this requirement of a stamp of the prescribed denomination there was no legal stipulation prescribing the denomination of stamps that should be affixed. The Stamp Ordinance was not appropriately amended. Therefore no stamp duty was payable on notices of appeal or applications for leave to appeal under the Administration of Justice Law, No.44 of 1973.

When the Administration of Justice Law was taken off the Statute book and the Civil Procedure Code was revived by Law No.19 of 1977 and amended by Law No.20 of 1977 the provisions in regard to appeals underwent a change. Under the provisions of the Civil Procedure Code as amended appeals from any final judgment pronounced by any original court in any civil action, proceeding or matter had to be preferred by lodging a notice of appeal followed within sixty days by a petition of appeal (sections 754(1), (5), 755(1) and (3)). The notice of appeal had to be duly stamped but the petition of appeal was exempt from stamp duty. Appeals from any order (not a final judgment) of any original court made in the course of any civil action, proceeding or matter were possible with the leave of the Supreme Court first had and obtained upon a duly stamped application for leave to appeal (sections 754(2),(5) 756(2)). Needless to say the reference to the Supreme Court in the provisions of the Civil Procedure Code must be read as a reference to the Court of Appeal constituted under the Constitution of 1978 (Article 169). The Civil Procedure Code now operative provides that notices of appeal and applications for leave to appeal shall be duly stamped. The expression "duly stamped" means here "stamped according to law". No consequential amendment to the Stamp Ordinance was made and there is no statutory provision stipulating the denomination of stamps that should be affixed. The Stamp Ordinance still carries provision for stamping only petitions of appeal but these too are now exempt from stamp duty by virtue of section 755(3) of the Civil Procedure Code.

So far as civil proceedings in the Supreme Court go there are only fourteen items made subject to stamp duty in Part 11 of Schedule A of the Stamp Ordinance. The Stamp duty is uniform for all the items according to the class. But it is wrong to assume that as all these fourteen items are subject to stamp duty at a uniform rate even papers not so itemised should be presumed to be subject to stamp duty at the same rate. The fourteen items in question do not

make an exhaustive list. I can find no justification for the view that all papers filed in the Supreme Court have to be stamped. Only those expressly enumerated have to be stamped. If the Legislature wanted all papers filed in the Supreme Court to be stamped, it would have said so. This surely cannot be presumed. Applications for leave to appeal are not referred to at all in the enumeration of papers that have to be stamped. The levy of stamp duty to be effective must be imposed in clear and express terms. In this connection the oft-quoted words of Lord Cairns in *Partington v. Attorney-General* (1), bear repetition:

“...as I understand the principle of all fiscal legislation, it is this: If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute.”

A similar approach was adopted by Lord Halsbury speaking from the Woolsack in the case of *Tennant v Smith* (2).

“In various cases the principle of construction of a taxing Act has been referred to in various forms, but I believe they may be all reduced to this, that inasmuch as you have no right to assume that there is any governing object which a taxing Act is intended to attain other than that which it has expressed by making such and such objects the intended subject for taxation, you must see whether a tax is expressly imposed.

Cases, therefore, under the Taxing Acts always resolve themselves into a question whether or not the words of the Act have reached the alleged subject of taxation.”

In the instant case the reference to petitions of appeal in sub-head A of Part 11 of Schedule A of the Stamp Ordinance is not wide enough to reach notices of appeal and applications for leave to appeal as subjects of taxation. The levy of stamp duty is governed by the letter of the law and not by its spirit. In construing a taxing statute one cannot bend its plain language to suit what the Legislature may

have contemplated or intended. To do so would be to cross the Rubicon which divides the province of the Judge from that of the Legislator.

The appeal is therefore allowed. The Attorney-General was represented before us as amicus curiae on our direction. Therefore there will be no costs either here or in the Court of Appeal.

**WIMALARATNE, J** — I agree.

**RATWATTE, J.** — I agree.

*Appeal allowed.*