

1931

Present: Driberg J.

## IN THE MATTER OF THE ELECTION FOR THE MATALE ELECTORAL DISTRICT.

## SILVA v. KARALLIADDA.

*Election petition—Security for costs—Insufficiency of amount—Recognizance—Signature of petitioner—Dismissal of petition—Ceylon (State Council Elections) Order in Council, 1931, rules 12 (2), (3), 19 and 21.*

Where, in an election petition, security has not been furnished in the right amount, the petition must be dismissed under rule 12 (3) of the rules under the Ceylon (State Council Elections) Order in Council, 1931. Rules 19-21 do not apply to such a case.

Where security is given by recognizance, the bond must be signed by the petitioner as well as the sureties. Where the bond fails to comply with this requirement, the irregularity is fatal and cannot be cured under rule 21.

**T**HIS was an election petition in which the respondent moved that the petition be dismissed on the following grounds—

- (a) that the security tendered, Rs. 5,000, was insufficient as the petition contains six specific charges,
- (b) that the recognizance was not signed by the petitioner and that it was not stamped.

*H. V. Perera* (with him *N. E. Weerasooria*), for the respondent.

*Gratiaen*, for the petitioner.

August 7, 1931. DRIEBERG J.—

The respondent moves that the election petition be dismissed on the ground that the security tendered, Rs. 5,000, is insufficient as the petition contains six specific charges. Rule 12 (2) provides a minimum security of Rs. 5,000 and Rs. 2,000 for each charge in excess of three; the petition makes charges of treating, bribery, undue influence, and conveyance of voters; in paragraph 3 (d) the petition alleges "that by reason of general bribery, treating, intimidation, and other circumstances the majority of voters were prevented from voting for the candidates whom they preferred". It was, no doubt, intended to allege the offences set out in Article 74 (A). In my opinion the charges of general bribery, general treating, and general intimidation were distinct charges from those of bribery, treating, and undue influence in regard to ascertained and named persons dealt with in Articles 51, 52, and 53 respectively.

But apart from this there are the four distinct charges I have mentioned and the bond entered into for Rs. 5,000 is therefore inadequate.

The security required by rule 12 (2) has to be given at the time of the presentation of the petition or within three days after, and if not so given the rule 12 (3) provides that no further proceedings shall be had on the petition and that the respondent may move for an order directing its dismissal and payment of the respondent's costs. This provision is

imperative and on this ground alone the petition should be dismissed; rules 19 to 21 do not apply to a case where the petitioner has not furnished security to the right amount.

The respondent also takes objection to the recognizance not bearing a stamp. I was referred by Mr. Perera to the judgment in the *Northern Province (Eastern Division) Electorate of Ennis A.C.J.*<sup>1</sup> where this objection was considered. The one authority referred to in the judgment, *The Windsor Petition*<sup>2</sup>, dealt with an unstamped promissory note tendered in evidence. It was admitted by the Judge on the ground that an election petition was a quasi-criminal proceeding; section 14 (4) of the Stamp Act, 1891,<sup>3</sup> enacts that except in criminal proceedings an instrument not duly stamped shall not "be given in evidence or be available for any purpose whatever".

In the *Athlone Petition*<sup>4</sup>, an objection that a recognizance was not stamped was disallowed "on the ground that the Court of Common Pleas does not require the recognizance to be stamped; it would have been otherwise had it been the case of a petition to Parliament". Under our Stamp Ordinance, schedule B., Part 2, a recognizance in civil proceedings in the Supreme Court is liable to stamp duty. It should be noted that the ruling in the *Athlone Petition* (*supra*) was not based on the reason that the proceedings were criminal or quasi-criminal but on practice, and in the case of the *Windsor Petition* (*supra*) the report does not show for what purpose it was sought to use the unstamped promissory note; if it was used for a collateral purpose, *i.e.*, to prove fraud, its being unstamped would not matter—*Holmes v. Sizsmith*<sup>5</sup>.

I do not wish to give a decision on this point, as it affects a question of revenue, without hearing the Attorney-General and it is not necessary for the petition must be dismissed on the first ground of objection.

A third objection was that the recognizance was signed by the two sureties and not by the petitioner only. Section 6 (5) of the Parliamentary Elections Act, 1868, requires that the recognizance shall "be entered into by any number of sureties not exceeding four" and rule 18 provides that there shall "be one recognizance acknowledged by all the sureties or separate recognizances by one or more"; the form given in rule 19 clearly shows that the recognizance is by the sureties only.

In the *Kingston-upon-Hull Election Petition*<sup>6</sup>, there were thirteen petitioners, four of whom entered into a recognizance for £250 each; the amount of the security under section 6 (5) of the statute is £1,000. It was held that, though the petitioners could not sign as sureties, each recognizance could not be said to be bad on the face of it and invalid but it was of course open to the objection that the party entering into it was both principal and surety, and that this objection must be treated as one to the sufficiency of the sureties under section 8 of the statute and the petitioners were allowed under section 9 to remove the objection by the deposit of money.

Rule 12 (1) of the sixth schedule to the Order in Council states that security for costs, charges, and expenses "payable by the petitioner shall be given on behalf of the petitioner", and rule 12 (2) provides that the

<sup>1</sup> *S. C. Min. of April 3, 1925.*

<sup>2</sup> *1 (O.M. and H).*

<sup>3</sup> *34 and 35 Vict. c. 392.*

<sup>4</sup> *(1869) 19 L. T. 530.*

<sup>5</sup> *(1852) 7 Ex. 802.*

<sup>6</sup> *(1869) 19 L. T. 648.*

security " shall be given in the form in rule 16 set forth, with two sureties, or by a deposit of money, or partly in one way, or partly in both "; rule 15 provides that there may be one recognizance acknowledged by both the sureties or separate recognizances each acknowledged by one surety as may be convenient.

It cannot be said that these provisions require that the recognizance should be signed by the petitioner except for the form in rule 16. The form in the English rules expressly provides for signature by the sureties only, the bond being conditioned on payment by the petitioner. The form in our rules is one that has to be signed by the petitioner as well as the sureties. The word " said " in the second paragraph of rule 16 cannot refer to persons other than those whose names appear in the first paragraph as having acknowledged their liability on the recognizance; in view of the form in rule 16, rule 12 (2) must be regarded as requiring the petitioner to enter into a recognizance with two sureties.

This was the view taken by Ennis A.C.J. in the case of the <sup>1</sup> *Northern Province (Eastern Division) Electorate (supra)* which was under the Order in Council of 1923 which had the same provisions regarding security as the new Order in Council. He was of opinion that this was not a case of insufficiency of security which could be cured under rule 21 but that being a recognizance which was not in compliance with rule 12 (2) the respondent was entitled to ask that the petition be dismissed.

For this reason and for the failure of the petitioner to furnish a bond for the right amount I order that the petition be dismissed and that the petitioner pay the costs of the respondent.

<sup>1</sup> *In re* THE BYE-ELECTION FOR THE NORTHERN PROVINCE (EASTERN DIVISION)  
ELECTORATE.

April 3, 1926. ENNIS A.C.J.—

This is an objection by the respondent to the recognizance tendered by the petitioners on the ground that the sureties are insufficient. This objection is made under rule 19 of the Election (Legislative Council) Petition Rules, 1924. At the same time this is an application by the respondent under rule 12 (3) for an order directing the dismissal of the petition, and for the payment of the respondent's costs, on the ground that, within the time limited by sub-rule 1, security for the payment of costs had not been given on behalf of the petitioners. The question of the sufficiency of the security has not been gone into, because the other matter was taken as a preliminary issue. It was objected, that the bond had not been stamped, and secondly, that the recognizance was not in fact a recognizance as the petitioner was not a party to it. The question as to whether or not the bond should be stamped is an interesting one, principally because it raises the question as to whether certain bonds in the Criminal Procedure Code, which have hitherto been accepted unstamped, should not be stamped. Mr. Soertsz argued that the recognizance need not be stamped, and he cited *The Windsor Case* to show that election petition proceedings are regarded as quasi-criminal, and he drew attention to that case to show that in England the Act, which makes the stamping of criminal proceedings unnecessary applies. So here we must turn to our own Stamp Ordinance, and it is to be observed that there is no general exemption of criminal proceedings. Section 4 of the Ordinance requires certain instruments mentioned in the schedule chargeable with duty to be stamped. Section 16 provides that such instruments shall be stamped at or before the time of execution. Section 28 provides by whom the duties are payable. Section 35 provides that an insufficiently stamped instrument shall be impounded. Section 36 provides that insufficiently stamped instruments shall not be acted upon. Schedule B, Part I., Article 15 (b) specifies the duties payable on bonds given as security for the payment of money. The present recognizance is an undertaking to pay the costs and charges of petition in a certain event, and it purports to be a recognizance with sureties. As such it would seem that it should be stamped. I need not, however, determine this question, because as I have said other documents of a similar nature might also have to be stamped, and before deciding it I should