

1922.

Present: Ennis and Schneider JJ.

CHINNIAH v. AHAMADULEVVAI

124—D. C. Batticaloa, 5,288.

*Bond in favour of Fiscal—Assignment by Deputy Fiscal.*

A deputy Fiscal can assign a bond given in favour of the Fiscal.

THE facts appear from the judgment.

*H. H. Bartholomeusz*, for plaintiff, appellant.—Section 5 of the Fiscals Ordinance, No. 4 of 1867, entitles the Deputy Fiscal to exercise within his district all the powers of the Fiscal. This is wide enough to assign a bond which was given in favour of the Fiscal.

*Croos-Dabrera* (with him *Spencer Rajaratnam*), for defendant, respondent.—This point was expressly raised in *Ibrahim Saibu v. Veerappen*,<sup>1</sup> where it was held that section 5 was not wide enough to give the Deputy Fiscal this power.

September 7, 1922. ENNIS J.—

This was an action on an assignment of a bond given in favour of the Fiscal, in which the first, second, and third defendants were jointly and severally liable under the bond. The learned Judge held that the endorsement on the bond was bad, and, therefore, gave judgment in favour of defendants. The learned Judge held that the Deputy Fiscal could not assign the bond made in favour of the Fiscal and, in support of his judgment, cited the case of *Ibrahim Saibu v. Veerappen* (*supra*). Neither in the decree under appeal, nor in the judgment, can I see any ground for saying that the 5th section of the Ordinance is not wide enough to enable the Deputy Fiscal to exercise the powers of the Fiscal. The section is not limited in any way. Whatever power the Fiscal had, the Deputy Fiscal can exercise within the limits of his district. I would accordingly set aside the decree, with costs, and hold the assignment to be valid, and give judgment for plaintiff as prayed for, with costs. It was urged that the second and third defendants could only be sued after the principal had been sued. This contention is not correct, as on the bond all of them were liable to be sued. Any question as to the property liable to be seized, and any question whether the property of sureties should be seized before the property of the principal is seized, is a matter which arises in execution and does not affect the liability of the parties on the bond to be sued.

SCHNEIDER J.—I agree.

*Appeal allowed.*<sup>1</sup> (1882) *Wendt's Rep.*, p. 226.