

Present: **Drieberg J.**

In the Matter of the Election for the Colombo North Electorate.

PEIRIS v. SARAVANAMUTTU.

Stamps—Election petition—Recognizance—Ordinance No. 22 of 1909, Schedule B, part I., item 15 (1).

A recognizance given as security for respondent's costs in an election petition is liable to stamp duty under Schedule B, part I., item 15 (1) to the Stamp Ordinance.

THIS was an election petition. The respondent asked for the dismissal of the petition on the ground that the recognizance given as security for costs was not duly stamped.

L. M. D. de Silva, D. S.-G. (with *Basnayake, C.C.*), for the Attorney-General.—An election petition is not a civil proceeding, but has rather the character of a quasi-criminal proceeding. (*Windsor Election Petition*¹; section 75 (3) and (4) of Ceylon Order in Council, 1931.) Under the existing Stamp Ordinance, No. 22 of 1909, the only documents which are exempted from stamp duty are those which come under section 4 (1). Under this section instruments by or in favour of the Crown are exempted from duty where the Crown would be liable to pay the duty. No exemption of this nature could be claimed for this recognizance.

Parts II. and III. of Schedule B are not exhaustive of the documents necessary to be stamped in law proceedings. If the document is not mentioned in parts II. and III., resort may be had to part I. (*Commissioner of Stamps v. Banda*²).

¹ 1 O'M. & H. 6.

² 31 N. L. R. 80.

This recognizance is not for a definite sum of money, but only gives the limit of the liability and should come under item 15 (1) in part I. of Schedule B. (*Attorney-General v. Mount.*¹)

B. F. de Silva (with him *L. G. Gunasekera* and *Wijewickrema*), instructed by *S. A. Jayasekara*, for the petitioner.—The recognizance is not a bond as there is no hypothecation, but only an acknowledgment of a debt.

The recognizance is for an unascertained sum of money and the liability is contingent.

Soertsz (with *Amerasinghe*), instructed by *N. Saravanamuttu*, for respondent.—The actual amount mentioned in the recognizance is the penal sum in which the petitioner may become liable. The recognizance is a bond for a definite sum of money and should be stamped under item 15 (b) of part I. of Schedule B. (*Attorney-General v. Mount (supra).*)

November 12, 1931. DRIEBERG J.—

This matter came up before me on September 7, 1931. The only ground on which the respondent asked for the dismissal of the petition was that the recognizance was not duly stamped. I directed that the matter should be argued after notice to the Attorney-General and this was done on October 29.

I have set out in my order of September 9 the facts relevant to this question and how it had been dealt with in previous cases.

Two questions arise for decision: whether the recognizance is liable to stamp duty, and if so how it should be stamped.

An election petition is not a civil proceeding, but has rather the character of a criminal or quasi-criminal proceeding. It is so regarded in England. In the *Windsor Election Petition*², Willes J. admitted in evidence an unstamped promissory note on the ground that the Act which rendered stamps unnecessary in criminal proceedings applied. The Act referred to was the Stamp Act, 1891³; a similar provision exists in section 36 (e) of our Stamps Ordinance, No. 22 of 1909.

The Deputy Solicitor-General, who has placed before me and closely examined all the material available, pointed out the different manner in which in England provision is made for duty on documents used as evidence in proceedings and documents used for other purposes. But it is not necessary to deal with this, for we have here one Act dealing with all documents liable to duty. Nor, as I shall point out, is the question affected by the nature of the proceedings for the fact that they are criminal would only be relevant if it was sought to admit the recognizance in evidence, in which case it could be admitted though not duly stamped, under section 36 (c) of the Stamp Ordinance, 1909. But it is not sought here to have the recognizance admitted as evidence.

Whether a recognizance is liable to stamp duty is best ascertained by examining the provisions relating to instruments of this nature in the earlier Ordinances. A recognizance is an obligation of record which a man enters into before some Court of Record or Magistrate duly authorized, with condition to do some particular act, as to appear at the assizes, to keep the peace, to pay a debt, or the like (*14 Halsbury 249*

¹ 32 N. L. R. 49.

² 54 & 55 Vict. c. 39, s. 14 (4).

³ 1 O'M. & H. 1.

referring to 2 *Bl. Com.* 511). It is a contract made with the Crown in its judicial capacity (*Pollock on Contract*, 7th ed., p.145). It is, in fact, a bond which as an instrument of contract or obligation falls within part I. of Schedule B of the Stamp Ordinance of 1909.

In the Stamp Ordinance, No. 11 of 1861, "bonds given by any person to Her Majesty, or to any Public Officer, for the use of Her Majesty, for any debt or sum of money due, or to become due to the Crown, or to the Government of this Island" were exempted from all stamp duty.

In the Stamp Ordinance, No. 23 of 1871, which repealed the Ordinance of 1861, there was the same exemption in favour of bonds and mortgages given for the same purposes, and the Ordinance No. 43 of 1884 which repealed No. 23 of 1871 granted the same exemption.

Ordinance No. 43 of 1884 was repealed and succeeded by the Stamp Ordinance, No. 3 of 1890. In this the exemption of bonds and mortgages was extended to leases, the words of the exemption clause being "Bonds, leases, or mortgages given by any person to Her Majesty, or to any Public Officer, for the use of Her Majesty, for any debt or any sum of money due or to become due to the Crown, or to the Government of this Island". Up to this time therefore all bonds in favour of the Crown were exempted from duty. In these Ordinances the exemption clause appears in the Schedule declaring the stamp duty on bonds.

In the existing Stamp Ordinance, No. 22 of 1909, which repealed the Ordinance of 1890, there is no exemption clause of this nature in part I. of Schedule B which provides for the duty on bonds and the exemption, if it exists, can only be under the provisions of section 4 of the Ordinance, which, after providing for the liability of the instruments and documents in the Schedule B, enacts as follows, in sub-section (1); "Provided that no duty shall be chargeable in respect of any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument".

The only instruments in favour of the Government on which, but for the exemption the Government would be liable to pay duty are those mentioned in sub-sections (c) and (d) of section 28 of the Ordinance. In the case of conveyances, leases and agreements to lease the duty is payable by the grantee, lessee or intended lessee; sub-section (d) deals with an instrument of exchange in which the parties pay the duty in equal shares and in such a case the Government as a party would be liable to pay half the duty. There is no exemption in the case of an instrument in favour of the Government where the duty is not payable by the Government, and in the case of a bond section 28 provides that the duty is payable by the person making or executing it. It follows therefore that exemption cannot be claimed for this recognizance under section 4 (1) of the Ordinance, and no distinction is drawn between civil and criminal proceedings.

Before considering to what duty a recognizance is liable I might deal with another ground on which exemption was suggested. There is no special provision for bonds given in criminal proceedings in the Supreme

Court; part II. of Schedule B, which deals with the Supreme Court, makes provision only for civil proceedings. It cannot be said, however, that this implies that instruments in all other proceedings are not liable to stamp duty.

In part III. of Schedule B as amended by Ordinance No. 19 of 1927, the provision for duty on bonds which existed in the Ordinance of 1909 was omitted. It was held, however, that a bond by an administrator was still liable to duty for, though omitted from part III. which deals with testamentary proceedings, it was still liable as a bond under item 15 (b) of part II. (*Commissioner of Stamps v. Banda*¹). This ruling was approved by a Bench of Three Judges in the case of *Attorney-General v. Mount*², so far as the liability of the bond under part II. was concerned, but it was held that it was liable under item 15 (1) and not under item 15 (b).

The decision in *Attorney-General v. Mount (supra)* is conclusive on the question of how such an instrument should be stamped. In that case the bond was by an administrator for the due administration of the estate and was drawn for a sum representing the value of the whole estate. It was held that it did not fall within item 15 (b) which provides for "a bond or mortgage not affecting land, given as security for the payment of any definite and certain sum of money". The bond was in the form 90 of the Civil Procedure Code and is conditional in form, the bond being void on a full and final accounting by the administrator. In this case the bond is given under the provisions of clause 12 of the sixth schedule of the Order in Council which requires the petitioner to give security for the payment of all costs, charges and expenses that may be payable by him and provides that this security may be given by a recognizance or by a deposit of money or partly in one way and partly in the other; as in the case of a bond by an administrator the recognizance declares that the persons executing it are bound to the King in the sum of Rs. 10,000, the condition being that they will pay all costs, charges and expenses payable by the petitioner and that the recognizance shall be void on such payment being made.

The recognizance therefore is not given for a definite and certain sum of money, but for an unascertained sum and all that can be recovered under it is the amount which on the termination of the proceedings may be found due by the petitioner, the sum of Rs. 10,000 being the limit of what may be recovered under it.

As was held in *Attorney-General v. Mount (supra)* an instrument of this kind can only fall under item 15 (1) and it is liable to a stamp duty of Rs. 10 whatever may be the amount stated in it; it was stamped at execution with stamps of the value of Rs. 25 and is therefore duly stamped.

This disposes of the only objection of those set out on the respondent's list of July 22 which was pressed.

The respondent will pay the petitioner the costs of the proceedings taken on his objection.

¹ (1929) 32 N. L. R. 80.

² (1930) 32 N. L. R. 49.