

1918.

*Present : De Sampayo J.*FERREIRA *v.* JAYASEKERA.178—*M. C. Galle, 8,072.*

Stamp duty—Petition of appeal—Appeal by an officer of the Municipal Council, with the sanction of the Solicitor-General.

A petition of appeal by an officer of a Municipal Council is not exempt from stamp duty.

THE facts appear from the judgment.

E. W. Jayawardene, for appellant.

March 4, 1918. DE SAMPAYO J.—

This was a prosecution brought by an Inspector of the Municipality of Galle against the accused, for having turned loose or suffered to be turned loose in a public road a cow, in breach of section 94 (1) of the Ordinance No. 10 of 1861. The Magistrate acquitted the accused on the authority of the decision of this Court in *P. C. Ratnapura, No. 7,668, of November 24, 1917*, that in the absence of a positive act on the part of the accused he could not be prosecuted, because the animal merely strayed on to the public road, as appears to have been the case. The complainant thereupon filed an appeal, with the sanction of the Solicitor-General. When the record came to the Registry it was observed that the petition of appeal did not bear a stamp of Rs. 5, as required by section 340 (3) of the Criminal Procedure Code, and on reference being made to the Police Magistrate, the proctor for the complainant contended that the petition of appeal was exempt from stamp duty, and wished the matter to be discussed in this Court. I have heard Mr. E. W. Jayawardene, who appeared for the appellant, on this point. In my opinion the petition of appeal is not exempt from stamp duty. Mr. Jayawardene has argued that the second proviso to the provision of the schedule to the Stamp Ordinance with regard to stamps in the Police Court covered the case. In the provisions relating to Police Courts the Ordinance requires a stamp of 30 cents for the complaint or charge and 18 cents for a summons. Then comes several provisos. The first of them is that when a complaint is made orally, a stamp shall be supplied for the purpose of being affixed to the written record of the complaint. The next is that when the complaint or charge is made by an officer of Government,

or by a Police or Municipal officer, or officer of a Local Board, or the Board of Improvement, Nuwara Eliya, or of a Provincial or District Road Committee, Board of Health, or Sanitary Board, in the execution of his duty, or by a Government renter in matters relating to his rent, no stamp duty shall be payable. The last proviso is that it shall be lawful for the Magistrate, on being satisfied that complainant has a fair ground of complaint but is unable to supply stamps for the plaint and summons or subpoenas, or that the defendant is unable to supply stamps for subpoenas, to allow such complaint to be filed, and such summons and subpoenas to be issued without stamps. It is the second of these provisions that Mr. Jayawardene relies upon, and his argument is that the words "no stamp duty shall be payable" is a general exemption of all proceedings in a case of the kind contemplated, including even the petition of appeal. It is obvious, however, that the provisos must be read with the main provision as regards stamps, which has reference only to a charge or complaint in the Police Court. For any provisions with regard to stamps in the petition of appeal reference must be made to the Criminal Procedure Code. Sub-section (3) of the section already referred to, while it enacts that the petition shall bear a stamp of Rs. 5, empowers the Police Court to accept the petition of appeal and to allow the payment of the stamp fee to stand over until judgment in the appeal shall have been given. Sub-sections (4) and (5) then provide that if the appeal is in whole or in part, in favour of the appellant, the amount of stamp fee if previously paid shall be returned to him, and that if the appeal is against the appellant, and such fee has not been paid, the same shall be paid by him or recovered from him in the way of fine, unless the Supreme Court shall deem fit to remit all or any part of such stamp fee, in which case only such part as shall not be so remitted shall be recovered. Here, again, for the purpose of giving effect to these two sub-sections, the Police Court must, to begin with, exercise its power under sub-section (3), and allow the payment of the stamp duty to stand over until judgment in appeal shall have been given. There is no suggestion in this case that the Police Magistrate purported to exercise any such power. All that he did was to accept the petition of appeal, without applying his mind to the question of stamps. Indeed, in reply to the communication by the Registry, he himself says that he is unable to find any provision whereby the Municipality is exempted from payment of stamp duty in criminal appeals, and he makes no reference to any exercise of his power under sub-section (3) of section 340 of the Criminal Procedure Code. Mr. Jayawardene also refers me to section 36 of the Stamp Ordinance concerning the re-stamping of documents, but that obviously has regard only to instruments produced in evidence. The petition of appeal is not an instrument of that kind. I regret that I have to hold that this appeal is not

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in order, because I am informed this appeal is taken as a test, there being many other prosecutions of the same kind pending in the Police Court of Galle. It is possible, of course, to bring up the real point intended to be submitted in appeal in connection with any of the other cases.

The appeal is therefore rejected.

Appeal rejected.

