

1905.
November 21.

ASSARY v. PERERA

P. C., Avissawella, 14,181.

Prohibition against sale of stamps without license.—Exemption—Petition-drawer—Ordinance No. 3 of 1890, section 43.

Ordinance No. 3 of 1890, section 43, enacts—

“No person, other than the Commissioner or a Government Agent, shall vend or deal in stamps in any part of this Island without having first obtained from the Commissioner a license for that purpose, which shall be in force and unrevoled at the time of such vending or dealing; and if any person, other than such Commissioner or Government Agent, shall sell or offer for sale any stamp denoting or purporting to denote any stamp duty, or shall exchange any such stamp for any other stamp or for any other article or thing, without holding such license as aforesaid, and in accordance with the terms of such license, he shall for every such offence be liable to a fine not exceeding one hundred rupees. Provided that it shall be lawful for any person employed to prepare or write any instrument liable to stamp duty to charge his employer with the amount of the stamp or stamps affixed to or impressed on the paper or other material upon which such instrument shall be written, without having obtained any such license as aforesaid to vend or deal in stamps.”

Held, that a petition-drawer employed by a person to prepare an affidavit came within the above proviso, and that such petition-drawer might lawfully charge his employer with the amount of the stamp affixed by him to the affidavit which he had prepared.

THE facts sufficiently appear in the judgment.

H. A. Jayewardene, for accused, appellant.

Van Langenberg, A.S.-G., for complainant, respondent.

Cur. adv. vult.

21st November, 1905. GRENIER, J.—

The appellant was convicted of a breach of section 43 of Ordinance No. 3 of 1890, in that he sold a rupee stamp to the complainant without having a license to do so. It appears that the appellant is a petition-drawer, and on the 11th October, 1905, he prepared an affidavit for the complainant, to which he affixed a stamp of one rupee. The appellant explains that the complainant came to him to have this affidavit drawn out, and that he sent him to the stamp

vendor for a stamp of one rupee. The stamp vendor had no stamps, and looking through his papers, the appellant says, he found a rupee stamp which had been given him by one Francis Perera. This stamp he sold to the complainant for one rupee, which was the full face value of it. 1905.
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The Magistrate convicted the appellant on his own admission and sentenced him to pay a fine of Rs. 50. It was argued for the appellant that the proviso to section 43 protects him, and that the conviction was therefore bad in law. As the matter was one which affected the revenue, the Solicitor-General, at my request, appeared for the respondent and conceded the soundness of the position taken up by the appellant's counsel. I was also strongly of opinion, when the case was first argued before me, that the proviso to section 43 applied to the facts of the case. The words of the proviso are as follows:—" Provided that it shall be lawful for any person employed to prepare or write any instrument liable to stamp duty to charge his employer with the amount of the stamp or stamps affixed to or impressed on the paper or other material upon which such instrument shall be written, without having obtained any such license as aforesaid to vend or deal in stamps."

It is a well-known practice for proctors who have to prepare pleadings and other documents for their clients to have in their possession stamps purchased from licensed stamp vendors to be made use of as occasion required. The clients are of course charged with the value of the stamps, and the revenue is in no way affected or defrauded. The proviso I have already referred to makes no distinction in regard to the persons who are entitled to take advantage of it, and is clearly applicable to every person who is employed to prepare or write any instrument liable to stamp duty. Every such person is not required to obtain any license to vend or deal in stamps, but is at liberty, if he has a stamp, to charge his employer with the amount of the stamp affixed to the document which he has prepared for him. The words " any person employed to prepare or write any instrument liable to stamp duty " must be taken to include even a person in the position of the appellant in this case, although he may be only a petition-drawer. I find that the word " person " is defined in the Ordinance, and includes a company, corporation, and society. It is clear, therefore, that the word must be construed very liberally, and that the appellant committed no breach of section 43 when he charged his employer with the amount of the stamp which he affixed to the affidavit which he had prepared for him. The appellant must be acquitted and discharged.