

1959

*Present : Basnayake, C.J., and Pulle, J.*

A. P. PODIHAMINE, Appellant, and JORANIS PERERA *et al.*,  
Respondents

*S. C. 81—D. C. (Inty.) Colombo, 15330/T*

*Stamps—Testamentary proceedings—Appeal therefrom—Decree of Supreme Court—  
Duty payable—Stamp Ordinance, Schedule A, Part II (9), Part III.*

In an appeal from a decision in a testamentary proceeding the appellant must supply stamps for the Supreme Court decree. Failure to do so is fatal to the reception of the appeal.

**A**PPPEAL from a judgment of the District Court, Colombo.

*H. W. Jayewardene, Q.C.*, with *D. R. P. Goonetilleke*, for Petitioner-Appellant.

*W. D. Gunasekera*, for 1st Respondent-Respondent.

*P. N. Wikremanayake*, for 19th Respondent-Respondent.

*V. Tennekoon*, Senior Crown Counsel, with *E. R. de Fonseka*, Crown Counsel, as *Amicus Curiae* (on notice).

November 6, 1959. BASNAYAKE, C.J.—

This appeal comes up before us for an order whether it should be listed for hearing as the necessary stamps for the Supreme Court decree have not been supplied by the appellant. Learned counsel contends that under the Schedule to the Stamp Ordinance no stamp duty is payable on the decree of the Supreme Court as the appeal is from a decision in a testamentary proceeding and all stamp duties payable on such proceedings are prescribed in Part III of Schedule A of the Stamp Ordinance which makes no provision for stamp duty on the decree of the Supreme Court. He relies on two decisions of this court reported in *42 N. L. R. 289* and *42 N. L. R. 411* as supporting the proposition that the only stamp duty payable in testamentary proceedings whether it be in the original court or in appeal is contained in Part III of the Stamp Ordinance. The former of the two cases decided that in guardianship proceedings documents other than those mentioned in paragraph F (f) of Schedule A, Part II, of the Stamp Ordinance are exempt from stamp duty. In the latter case it was held that proceedings under section 68 of the Courts Ordinance for the transfer of a testamentary case from one District Court to another should be stamped under Part III of Schedule A of the Stamp Ordinance. In the course of the judgment in the latter case Moseley, S.P.J., said “ Indeed in the case referred to immediately above, Withers J. described the purpose of Part III in the Ordinance of 1890 as ‘ to exhaust the duties chargeable in testamentary proceedings in the Supreme Court and the District Courts ’.”

We are unable to agree that that statement applies to the Stamp Ordinance in its present form and that Part III of Schedule A of the Stamp Ordinance does contain the stamp duties payable in proceedings in the Supreme Court and on instruments passed under its seal.

In our opinion it is clear that Part III of the Stamp Ordinance contains only duties payable in the District Court in testamentary proceedings. No provision is made therein for the stamp duty payable on the decree of the Supreme Court for the same reason that no such provision is made in Part II in respect of proceedings other than testamentary proceedings in the District Court. If learned counsel’s contention is sound then all decrees of the Supreme Court would not be liable to duty. Such a view is untenable in the face of item 9 of Part II of the tariff prescribed for law proceedings in the Supreme Court. The scheme of the Ordinance is that each part of the tariff is exhaustive of the duties payable on proceedings in the court in respect of which the duties are prescribed. In respect of the stamp duty payable on the decree of the Supreme Court

the duty on which is prescribed in the tariff applicable to the Supreme Court, the legislature has enacted a special provision which reads—

“ In appeals to the Supreme Court the appellant shall deliver to the Secretary of the District Court or clerk of the Court of Requests, together with his petition of appeal, the proper stamp for the decree or order of the Supreme Court and certificate in appeal which may be required for such appeal.”

It has been authoritatively decided by this court that failure to comply with that provision is fatal to the reception of an appeal. (*Attorney-General v. Karunaratne*<sup>1</sup>).

The appeal is rejected with costs.

PULLE, J.—I agree.

*Appeal rejected.*

<sup>1</sup> (1935) 37 N. L. R. 57.

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