

Present: Schneider J.

1922.

THE COMMISSIONER OF STAMPS v. AHAMADULEVVAL.

222—P. C. Batticaloa, 11,006.

Stamp Ordinance, s. 50—Application to Police Court to recover deficiency of stamp duty—Does an appeal lie?

The Registrar of Lands produced an authority from the Commissioner of Stamps to the Police Magistrate to recover, from the appellant who had executed a certain instrument, the deficiency of stamp duty and a penalty, and made an application under section 50 of the Stamp Ordinance, 1909. The appellant deposited the money under protest, and appealed to the Supreme Court.

Held, that no appeal lay.

In cases coming under chapter IV of the Stamp Ordinance, 1909, the Police Court is only invoked for the purpose of recovering the amount already determined by the Commissioner. It has no jurisdiction over the question whether that amount is rightly due or not. The mere fact that a Police Court is authorized to recover the sum does not invest the proceeding with the character of a criminal case or matter within the meaning of section 338 (1) of the Criminal Procedure Code.

THE facts are set out in the judgment.

Tisseverasinghe (with him *Fonseka*), for appellant.

Janasz, C.C., for respondent.

June 13, 1922. SCHNEIDER J.—

This is an appeal by a person who had executed an instrument in 1915, whereby he assigned certain rights to another. In March, 1922, the Registrar of Lands at Batticaloa produced an authority from the Commissioner of Stamps to the Police Magistrate to recover the sum of Rs. 327.50 as being the amount of the deficiency of the stamp duty and of a penalty of Rs. 25. This was said to be recoverable under section 41 (1) (b) of the Stamp Ordinance, No. 22 of 1909. The application for recovery was stated to be made in terms of section 50 of the Stamp Ordinance. The appellant appeared on summons, and stated that he would deposit the amount by a particular date, but under protest as he desired to appeal to the Supreme Court. This was allowed, and the money was deposited by the date named. The appellant then preferred this appeal. Crown Counsel appearing on behalf of the Commissioner of Stamps, who has been made a party to the appeal, took the preliminary

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J.*The Commis-
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objection that no appeal lay. I must uphold this objection Chapter III of the Stamp Ordinance provides the procedure for any adjudication as to the stamps fixed or to be fixed to instruments, and that at the end of the chapter makes provision for an appeal to this Court from the determination of the Commissioner of Stamps. Now it is evident that the appellant's case does not come within any of the cases contemplated in chapter III. He therefore cannot rely upon section 32 as conferring a right of appeal on him. Chapter IV makes provision for cases of instruments not having been duly stamped, and at the end of the chapter, namely, in section 50, provision is made for application to be made by an officer authorized in this behalf by the written order of the Commissioner of Stamps to recover from any person liable to pay any duty, penalty, or other sum as if it were a fine imposed under the Ordinance by any Police Magistrate having jurisdiction where that person may for the time being be resident. The section also provides that the Magistrate may recover such amount, although it be larger than the amount of the fine he may ordinarily impose. It is evident, therefore, that in cases coming under chapter IV, the Police Court is only invoked for the purpose of recovering the amount already determined by the Commissioner. It has no jurisdiction over the question whether that amount is rightly due or not. The mere fact that a Police Court is authorized to recover a sum does not invest the proceeding with the character of a criminal case or matter within the meaning of section 338 (1) of the Criminal Procedure Code. In my opinion, therefore, there is no right of appeal in this matter. I was invited to deal with the proceedings by way of revision. I do not think I would be justified in doing that because the Magistrate has done no more than the law authorizes him to do, and the order of the Commissioner appears to me to be consistent with the provisions of the Stamp Ordinance.

I therefore dismiss the appeal.

Appeal dismissed.

