

1932

*Present: Dalton J. and Jayewardene A.J.*WIJESEKERE *v.* COMMISSIONER OF STAMPS.*D. C. (Inty.) 187 (Stamps).*

*Stamps—Election petition—Bond given as security for respondent's costs—Recognizance in favour of King—Exemption—Stamp Ordinance 1909, s. 32.*

A recognizance in favour of the King given in the form set out in rule 16 of schedule VI. of the Ceylon (State Council Elections) Order in Council, 1931, is liable to stamp duty.

**A** PPEAL from a decision of the Commissioner of Stamps.

Appellant in person.

*Basnayaka, C.C.*, for respondent.

May 18, 1932. DALTON J.—

This is an appeal under the provisions of section 32 of the Stamp Ordinance, 1909, against the determination of the Commissioner of Stamps that the bond filed by the appellant, as petitioner in an election petition, is liable to stamp duty. At the time of the presentation of his petition, appellant gave security for all costs, charges, and expenses to which the petitioner may become liable, in terms of rule 12, schedule VI., of the Order in Council, 1931, but states he did not stamp it, as it was exempted from stamp duty under the provisions of section 4 of the Stamp Ordinance. Security was given in the form of recognizance set out in rule 16 of schedule VI., the principal and sureties being bound to "Our Sovereign Lord the King".

It is conceded by appellant, and it is clear, that the instrument is liable to duty under the tariff set out in the schedule, unless there is an exemption in section 4 of the Ordinance. The section that appellant urges exempts him from duty is as follows:—

Provided that no duty shall be chargeable in respect of—

- (1) 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:

He urges that this is an instrument in favour of the Government in as much as he is bound by it to Our Sovereign Lord the King. If the proviso ended at the word "Government" there might possibly be something in his argument, but it is not necessary to consider that. The terms of the proviso are quite clear, and will be found in most revenue ordinances of this kind, to avoid the Government taking money out of one pocket merely to put it into another. Appellant has to show, before the exemption can apply, that the Government would be liable to pay the duty chargeable in respect of this instrument but for this exemption, and that he is unable to do. This point has already been decided in

*Peries v. Saravanamuttu*<sup>1</sup>, where Drieberg J. held that such a recognizance as we have here was liable to duty. He deals with the provisions of section 4 of the Stamp Ordinance in the course of his judgment.

Appellant urges that that decision is not binding on this Court, that the learned Judge was assuming a jurisdiction which he did not have, as he was sitting as an election petition Judge whose powers were strictly limited by the terms of Part VI. of the Order in Council, and lastly, if he was sitting as a Judge of the Supreme Court and not as an election petition Judge, he had no jurisdiction to hear the matter sitting alone. The appellant is correct on the first point, but with regard to that I can only say I have come to the same conclusion as the learned Judge after hearing the argument before us. The second and third points, therefore, it is not necessary to decide, since I am satisfied the instrument is liable to duty. I might, however, point out that under the Order in Council all interlocutory matters in connection with an election petition may be dealt with and decided by any Judge of the Supreme Court, unless otherwise ordered by the Chief Justice.

The appeal fails, and must be dismissed with costs.

JAYEWARDENE A.J.—

I agree. I would add that the same objection was taken in the petition *re the By-election for the Northern Province*<sup>2</sup>. Ennis A.C.J. after considering the effect of several sections of the Stamp Ordinance said—

“The present recognizance is an undertaking to pay the costs and charges of the petition in a certain event, and it purports to be a recognizance with sureties, as such it would seem that it should be stamped.”

The learned Judge, however, did not decide the question because he desired to hear the Attorney-General and because he was upholding another objection. I agree with Drieberg J. in *Peries v. Saravanamuttu*<sup>3</sup>, where the matter has been carefully considered, that there is no exemption from stamp duty 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 under section 28 of the Stamp Ordinance the duty is payable by the person executing the bond.

*Appeal dismissed.*

<sup>1</sup> 33 N. L. R. 229.

<sup>3</sup> 33 N. L. R. 229.

<sup>2</sup> 33 N. L. R. 87.