

1960 *Present* : Basnayake, C.J., and Sansoni, J.

THENUWARA, Petitioner, and THENUWARA, Respondent

S. C. 376—Application for Conditional Leave to Appeal to the Privy Council in S. C. 126/D. C. Colombo, 16607

Privy Council—Application for conditional leave to appeal—Must be properly stamped—Stamp Ordinance, Schedule A, Part II—Appeals (Privy Council) Ordinance, Schedule, Rule 2.

An application for conditional leave to appeal to the Privy Council which is insufficiently stamped will not be entertained.

APPPLICATION for conditional leave to appeal to the Privy Council.

H. W. Jayewardene, Q.C., with K. N. Choksy, for 1st Respondent-Petitioner.

Colvin R. de Silva, with V. J. Martyn, for Petitioner-Respondent.

June 22, 1960. BASNAYAKE, C.J.—

Objection is taken to this application for conditional leave to appeal under section 3 of the Appeals (Privy Council) Ordinance on the ground that the petition for leave has not been stamped with the correct amount

¹ (1953) 55 N. L. R. 94.

of stamp duty. It is admitted by learned counsel for the applicant that the amount of duty that should have been affixed on the petition is Rs. 318, but it bears stamps to the value of only Rs. 131. The scale of duties according to which an application for conditional leave to appeal to the Privy Council should be stamped is in Part II of Schedule A of the Stamp Ordinance, but in this instance the document has been stamped according to the scale of duties in Part III of that Schedule. My brother Weerasooriya has held in the case of *Usoof v. Nadarajah Chettiar*¹ that an application for conditional leave to appeal to the Privy Council which is insufficiently stamped will not be entertained even if the deficiency in stamp duty is subsequently made good by the applicant but after the expiry of the period of 30 days prescribed in Rule 2 of the Schedule to the Appeals (Privy Council) Ordinance. The instant case falls within the ambit of that decision.

The objection is therefore upheld.

SANSONI, J.—I agree.

Application rejected.
