

1922.

*Present: Bertram C.J. and Schneider J.***SATHASIVAM v. VAITHIANATHEN.***D. C. Colombo, 2,002.**Stamp duty—Actions under the Trusts Ordinance, 1917—Interpretation Ordinance, No. 21 of 1901, s. 10.*

Actions relating to public trusts under the Trusts Ordinance, 1917, are liable to stamp duty as actions of the value of Rs. 1,000.

Sub-section 3 of section 116 of the Trusts Ordinance which enacts that all petitions shall bear a stamp of Rs. 10 was designed to provide for proceedings of a special nature by petitions under sections 35, 74, and 76, and other sections of the Trusts Ordinance.

THE facts appear from the judgment.

Arulanadan (with him *Retnam*), for defendants, appellants.—Section 116 (3) of the Trust Ordinance provides that petitions under the Ordinance should bear a stamp of Rs. 10. There is no other provision either in the Trust Ordinance or in the Stamp Ordinance which requires proceedings to be stamped, nor are they specially exempted. It has been the practice not to stamp such proceedings. But section 116 (1) of the Trust Ordinance enacts that all proceedings under the Ordinance shall be governed by the enactments and rules relating to civil procedure for the time being in force which requires plaints and all proceedings, unless specially exempted to be stamped.

If, therefore, these proceedings should be stamped, they would come under the miscellaneous class in the schedule to the Stamp Ordinance. The latter provides that actions relating to public charities under chapter 45 of the Civil Procedure Code shall be charged as of the value of Rs. 1,000. That this chapter was repealed by the Trust Ordinance was lost sight of when the schedule to the Stamp Ordinance was repealed in 1919. This difficulty is cleared by the application of section 10 of the Interpretation Ordinance.

Keuneman (with him *Spencer Rajaratnam*), for plaintiffs, respondents.

September 15, 1922. **BERTRAM C.J.**—

This case has been brought before us by the Registrar, because, on the appeal being presented to this Court, it was found that the proceedings were unstamped, the learned Judge in the Court below

apparently being of opinion that actions relating to public trusts were not liable to stamp duty. This is said to be the practice, but it is clearly an erroneous practice. It is said to be based upon section 116 of the Trusts Ordinance, No. 9 of 1917, which enacts in sub-section 3 that all petitions presented in any Court in any proceedings under this Ordinance shall bear a stamp of Rs. 10. This special provision with regard to petitions under the Trusts Ordinance does not affect other documents liable to stamp duty. They are governed by the first sub-section of section 116 which says that the enactments and rules relating to civil procedure, at the time being in force, shall apply to them. These words bring into operation the general provisions of the Stamp Ordinance with regard to legal proceedings. Sub-section 3 was a special enactment designed to provide for proceedings of a special nature by petitions under sections 35, 74, and 76, and other sections of the Trusts Ordinance. It was, no doubt, modelled on section 11 of the Entail and Settlement Ordinance of 1876, which, in so far as it relates to trusts, was repealed by the Trusts Ordinance. The proceedings, therefore, must be stamped like any other proceedings.

Mr. Arulanandan, however, raises another point, namely, on what scale are they to be stamped, and contends, I think rightly, that they must be stamped as belonging to the miscellaneous class. The law on this question is as follows: Our old Stamp Ordinance, No. 22 of 1909, provided in the schedule that actions relating to public charities under chapter 45 of the Civil Procedure Code shall be charged as of the value of Rs. 1,000. Chapter 45 of the Civil Procedure Code was repealed and re-enacted in very large form by certain sections of chapter 10 of the Trusts Ordinance. There can be no question that in the year 1918, after the enactment of the Trusts Ordinance, section 10 of the Interpretation Ordinance, No. 21 of 1901, came into play, and consequently the reference in the Stamp Ordinance of 1909 to chapter 45 of the Civil Procedure Code which had been repealed by the Trusts Ordinance was deemed to be made to a portion of the Trusts Ordinance, corresponding to the chapter so repealed. Actions, therefore, relating to public charities under the Trusts Ordinance were in 1918 chargeable as of the value of Rs. 1,000. In 1919, however, the schedule to the Stamp Ordinance was itself repealed and re-enacted with modifications. The fact that chapter 45 of the Civil Procedure Code had been repealed was lost sight of, and consequently the amending Stamp Ordinance, No. 10 of 1919, contained a reference to an enactment which had been already repealed. It cannot, however, have been the intention of the Legislature in thus re-enacting in the same words a provision of the Ordinance of 1909, which was in force at the date of the new enactment only subject to the interpretation above indicated, to change the law as it then stood, or to give that provision any other interpretation.

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The question now arises, Does section 10 of the Interpretation Ordinance apply? That section, if strictly construed, seems to require that the repealing law must be subsequent to the enactment in which the reference occurs. I think, on consideration, that the word "subsequently" cannot be construed as meaning "subsequently to its own enactment." To justify such an interpretation, the words should run "which has been subsequently repealed."

We are thus in this position that in the Ordinance of 1919 there is a reference to a written law which has been repealed, but the repeal was not subsequent to the enactment of the Ordinance containing the reference, and the case is not, therefore, within the strict words of the section. The question arises whether we cannot apply the principle of the section, independently of the section itself, so as to give effect to what must have been the intention of the Legislature.

Some of the enactments of the Interpretation Ordinance are of a mechanical nature, designed to shorten statutory formulæ, or to deal with situations which cannot be dealt with except by a positive enactment. Others are the expressions of general principles of interpretation, which are valid independently of the enactment, section 10 is, in my opinion, of this latter description. In the English Interpretation Act the same principle is thus formulated:—

"Where this Act or any Act passed after the commencement of this Act repeals and re-enacts, with or without modifications any provisions of former Act, references in any other Act to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted."

It thus appears that the word "subsequently" in our formulation of the principle is not essential to the principle itself. The principle is that where an enactment is repealed and re-enacted, with or without modification, references in any other enactment to the repealed provisions, are, to be construed, as references to the corresponding provisions so re-enacted. The fact that our Legislature has formulated the principle in this particular manner does not preclude us from applying that principle to a case, which though not quite within the formula we have adopted is within the principle itself.

I would, therefore, rule that actions relating to public charities under chapter 10 of the Trusts Ordinance are chargeable as of the value of Rs. 1,000.

SCHNEIDER J.—I agree.