

*Present* : De Sampayo A.C.J. and Schneider J.

1923.

THE ATTORNEY-GENERAL *v.* VELUPILLAI.

67—*D. C. (Testy.) Jaffna, 928.*

*Stamp duty—Appointment of a representative of estate of deceased mortgagor—Ordinance No. 10 of 1919—Legal representative.*

An order appointing a representative of the estate of a deceased mortgagor under section 642 of the Civil Procedure Code requires to be stamped according to the value of the mortgage action.

THE facts appear from the judgment.

*Akbar, Acting S.-G. (with him Obeyesekere, C.C.), for the Crown, appellant.*

June 11, 1923. DE SAMPAYO A.C.J.—

In this matter the question is as to whether an order appointing a representative of the estate of the deceased mortgagor under section 642 of the Civil Procedure Code requires to be stamped under the amended Stamp Ordinance. The mortgagee, Velupillai, applied to the Court under section 642 for the appointment of a person to represent the deceased mortgagor. The Attorney-General intervened in the action for the purpose of raising the question of stamp duty and securing the interests of the revenue. The District Judge having made an order that no stamps were

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required for his order appointing a representative, the Attorney General has appealed. The Ordinance No. 10 of 1919, Part II., Schedule B, relating to District Court civil proceedings, requires every appointment of a guardian or next friend to be stamped according to the value of the action. The amending Ordinance, No. 32 of 1919, amended that provision by providing for the insertion of the words "or legal representative" after the words "next friend." The contention on behalf of the Attorney-General is that a legal representative in that connection meant a representative appointed under section 642 of the Civil Procedure Code. The expression "legal representative" is rather unhappy, because section 642 does not use it, and it is well known that the expression has a technical meaning, and refers to an administrator, executor, or, in the case of a small estate, to heirs who have adiated the inheritance. For the use of that technical expression, I may refer to sections 222, 338, 341, 394, and 397 of the Civil Procedure Code, and stamps required for the appointment of administrators, executors, and other representatives of that kind are covered by the Estate Duties Ordinance, and *prima facie* the appointment of a special representative under section 642 of the Code is excluded. It was, therefore, intended by the amending Ordinance to provide for stamp duty according to the value of the action, in the case of an appointment of a representative under section 642, for the purpose of an intended mortgage action. I think the order of the District Judge is erroneous, and he should be directed to see that the appointment of a representative, on the application of the mortgagee, is stamped according to the value of the mortgage action. There is no need to make any order as to costs.

SCHNEIDER J.—I agree.

*Appeal allowed.*

