

1931

*Present: Akbar J.*

COMMISSIONER OF STAMPS *v.* FERNANDO *et al.*  
[IN REVISION.]

*P. C. Negombo, 71,917.*

*Stamp Ordinance—Stamp duty on mortgage bond—Liability of mortgagors—  
Money paid to notary—Ordinance No. 19 of 1909, ss. 28 and 250.*

Where a mortgage bond has not been duly stamped, the mortgagors are not relieved of their liability to pay the duty under section 28 of the Stamp Ordinance, merely because they have provided the attesting notary with money to buy the necessary stamps.

In such a case the stamp duty may be recovered by the Commissioner of Stamps under section 50 of the Ordinance.

Section 50B of the Stamp Ordinance, 1909, as amended by Ordinance No. 18 of 1930, has no retrospective effect.

**A** PPEAL from an order of the Police Magistrate of Negombo upon an application of the Commissioner of Stamps to recover from the respondents of a sum of Rs. 229, being the stamp duty and the penalty payable on a mortgage bond executed by them.

*J. E. M. Obeyesekere, C.C.*, for Commissioner of Stamps.

*E. C. F. J. Senanayake*, for respondents.

<sup>1</sup> 1 N. L. R. 292.

<sup>2</sup> 21 N. L. R. 205.

October 27, 1931. AKBAR J.—

In this case the Commissioner of Stamps applied under section 50 of the Stamp Ordinance, 1909, for the recovery from the respondents of a sum of Rs. 229, being deficiency of stamp duty and penalty due upon a deed No. 2,001 dated October 16, 1929, and attested by the late Mr. H. P. Weerasuriya, Notary Public. This application was refused by the Police Magistrate on several grounds. The first ground was that the stamp duty in question had been paid by the respondents to the attesting notary. It is true that one of the two respondents paid sufficient money for the stamp duty to the notary, and the deed produced states that stamps to the value of Rs. 204 had been affixed to the duplicate and a stamp of Re. 1 had been affixed to the original of the deed. But it is clear from the document produced that it bears no trace of any stamp on it. There can be no question that P 1, the document produced, is the duplicate because the Commissioner of Stamps has produced for my inspection the protocol copy marked A. The document P 1 had been signed by the two respondents and at the time that they signed the deed it is clear that the document bore no stamps. The fact that the respondents paid money sufficient for the stamps to the notary is no excuse for their signing the document unstamped. Under section 28 of the Stamp Ordinance, in the case of mortgagee bond, the stamp duty has to be paid by the mortgagors, *i.e.*, the respondents. Under section 16 of the Ordinance any instrument chargeable with duty shall be stamped before or at the time of the execution. Under section 58 any person executing or signing any instrument chargeable with duty without the stamp being duly stamped commits an offence thereunder. Therefore it was the duty of the respondent to see that the document P 1 was properly stamped before they signed it. Under section 9 it was the duty of the respondents further to have cancelled the stamps. In my opinion the Commissioner of Stamps under section 50 was entitled to ask that the stamp duty be recovered from the respondents. The second ground upon which the learned Police Magistrate refused the application was that there was no proof that the document P 1 was the duplicate. As I have already pointed out there can be no doubt of this, because the production of the protocol copy and the fact that the original must be with the mortgagee show that the document produced was the duplicate. The third ground upon which the Commissioner refused the application was that the document had not come before the Commissioner of Stamps in the manner provided by law. Here, too, I think the Police Magistrate was wrong because the duplicate was sent under section 35 of the Notaries Ordinance, 1907, as amended by Ordinance No. 27 of 1909, as that section imposes an obligation on the heirs of the deceased notary to deliver all deeds to the Registrar of Lands. The Registrar of Lands under section 33 of the Stamp Ordinance, No. 22 of 1909, impounded the deed and under section 39 (2) the Registrar of Lands sent the document impounded to the Commissioner of Stamps. The last ground on which the learned Police Magistrate dismissed the application was that in his opinion action should have been taken under section 50B of the Stamp Ordinance, as amended by section 5 of Ordinance No. 18 of 1930. Now this Ordinance No. 18 of 1930 came into force on November 9, 1930; as the mortgage

bond, P 1, is dated October 16, 1929, Ordinance No. 18 of 1930 could have no application retrospectively unless there is a clear indication either from the subject-matter or from the wording of the Ordinance that it is to have retrospective effect. In my opinion section 50B cannot have a retrospective effect (see *Pardo v. Bingham*<sup>1</sup>). It is an extension of the law creating a new liability and cannot affect the rights and duties of parties which existed previous to the passing of the Ordinance. In my opinion the judgment of the learned Police Magistrate was wrong and I would set it aside and direct him to recover the sum of Rs. 229 under section 50 of the Stamp Ordinance from the respondents as if it were a fine imposed by the Police Magistrate.

*Set aside.*



<sup>1</sup> (1869) L. R. 4 Ch. App. p 735.