1914.

Present: Pereira J. and Ennis J.

JAYAWICKRAMA *et al. v.* AMARASOORIYA

164—D. C. Galle, 11,862.

Pleading insufficiently stamped—Not rejected by Court—Presumption in favour of an adjudication as to its sufficiency—Inadvertent omission of the Court to consider question of stamp duty—Court may return pleading for proper stamping before other side takes any steps in case—Attorney-General to take steps to recover deficiency of duty—Civil Procedure Code, ss. 46, 77—Objection not to be taken in answer as to insufficiency of duty.

When a plaint or an answer is not rejected by a District Judge under section 46 or section 77 of the Civil Procedure Code, the presumption is that the Judge has adjudicated in favour of the party who had tendered the pleading on the question as to the sufficiency of the stamp thereon. When a plaint or answer is accepted as the result of an inadvertent omission on the part of the Court to consider the question of the sufficiency of stamp duty, it may be that before any step in the regular course of procedure is taken by the opposite party the Court may return the pleading to be properly stamped ; but, generally speaking, where an insufficiently stamped pleading is accepted after consideration of the sufficiency of stamp duty or inadvertently, the remedy, if any exists, is by means of such action as the Attorney General, as representing the Crown, to which all stamp duties are a debt, may be deemed to be entitled to take. No objection can be taken by a defendant in his answer on the ground of the insufficiency of the stamp on a plaint.

THE facts appear from the judgment.

Bawa, K.C., for defendants, appellants.

H. J. C. Pereira, for plaintiffs, respondents.

Cur. adv. vult.

February 20, 1914. PEREIRA J.—

In this case the defendant appeals from two orders made by the District Judge: (1) an order directing that this action do proceed on the plaintiffs supplying a deficiency of stamp duty on the plaint; and (2) an order rejecting the 2nd, 3rd, 4th, 5th, 6th, and 7th issues suggested by the defendant's counsel. As regards the first order, the appellant's contention is that, having found that there was a deficiency of stamp duty on the plaint, the District Judge should have dismissed the plaintiff's claim altogether. The only provision of the law now in force relating to stamps on plaints appears to be the provision of section 46 of the Civil Procedure Code. Section 38 of Ordinance No. 23 of 1871 and section 34 of Ordinance No. 3 of 1890 gave the power to Judges to require an insufficiently stamped pleading to be duly stamped, and when that was done, to proceed with the action as if the pleading had been originally duly stamped; but these Ordinances were repealed by Ordinance No. 22 of 1909, which contained no such provision as that mentioned above. Section 37 of the Ordinance, I do not think, applies to pleadings in cases. It refers to "instruments tendered in evidence," and clearly a plaint does not answer to that description of document. So that when, in the case of a plaint under section 46 of the Code and in the case of an answer under section 77, the Judge does not reject the pleading, but accepts it, the presumption is that he has adjudicated in favour of the party who has tendered the document the question of the sufficiency of the stamp thereon, and I doubt that the adjudication in such a case can be interfered with by anybody. In the case, however, of a plaint or answer being accepted *per incuriam*, that is to say, as the result of an inadvertent omission on the part of the Court to consider the question of the sufficiency of the stamp thereon, it may be that before any step in the regular course of procedure is taken by the opposite party the Court may return the pleading to be properly stamped; but this question need not be considered on this appeal, because we have no information from the District Judge that the plaint in this case was accepted by him *per incuriam*, and no order returning the plaint was, in fact, made before the filing of the answer. When a Judge, having considered the question of the sufficiency of stamp duty, has accepted a plaint or answer, or has accepted it having inadvertently omitted to consider the question, the remedy, if indeed any exists, can only be by means of such action as the Attorney-General, as representing

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the Crown, to which all stamp duties are a debt, may be deemed to be entitled to take. It will be embarrassing to both the parties to any action and lead to disastrous results, if for instance, at a very late stage of the action a pleading can be thrown out for default of either party to make good any deficiency in stamp duty. Anyway, the sufficiency of the stamp on a plaint cannot be called in question as a matter of defence in an answer, any more than the fact that the plaint has not been " distinctly written on good and suitable paper, " as required by section 40 of the Code. The answer can only contain the matter indicated in sub-sections (*a*) and (*e*) of section 75. It has been argued that if that was so, an adjudication by the Judge that the plaint discloses a good cause of action cannot also be called in question when the plaint is once accepted ; but it will be seen that by sub-section (*d*) of section 75 the defendant is, in effect, allowed to set forth any matter of law upon which he may rely for his defence.

For the reasons that I have given above, it seems to me that the defendant had no right to claim that the action be dismissed, or even that the plaintiffs be required to supply the deficiency, if any in stamp duty, but as the plaintiffs have acquiesced in the order made, I would do no more than dismiss the appeal.

[His Lordship then proceeded to the consideration of the second order appealed from.]

ENNIS J.—

I agree. With regard to the question of stamps, it is to be observed that the Ceylon Stamp Ordinance is based on the Indian Stamp Act, with addition in the schedule of duties on law proceedings. For these proceedings to be liable to duty under the Ordinance they must be regarded as " instruments " under section 4. Section 37 enunciates the principle that once " an instrument has been admitted in evidence " it shall not, except as provided in the section, be called in question at any stage of the same suit or proceeding on the ground that it is not duly stamped.

The latest Ordinance, No. 22 of 1909, does not, however, contain any section similar in terms to section 34 of the repealed Ordinance, No. 3 of 1890. I see no reason why an order admitting a plaint should not be regarded as an order admitting an instrument in evidence. The plaint is, to use the words of the Evidence Ordinance, a document produced for the inspection of the Court. It contains admissions, and is a means by which a matter of fact may be proved as against the party making the admission. It must, it seems to me, be regarded as evidence, and the order accepting it can be reviewed only as laid down in section 37 of the Stamp Ordinance.

Appeal dismissed.