

1935

Present : Dalton S.P.J. and Soertsz A.J.

R. M. A. R. A. R. R. M. v. THE COMMISSIONER OF
INCOME TAX.

S. C. 24 of 1935.

Privy Council—Decision of Supreme Court from a decision under Income Tax Ordinance—No right of appeal to Privy Council—Ordinance No. 2 of 1932, s. 74.

There is no right of appeal to the Privy Council from a judgment of the Supreme Court on a case stated under section 74 of the Income Tax Ordinance.

A PPLICATION for conditional leave to appeal to the Privy Council from a judgment of the Supreme Court in a case stated under the Income Tax Ordinance.

N. Nadarajah, for assessee-appellant, in support.

M. W. H. de Silva, Acting S.-G. (with him *Basnayake*, C.C.), for Commissioner of Income Tax, respondent.

Cur. adv. vult.

December 20, 1935. DALTON S.P.J.—

This is an application for conditional leave to appeal to the Privy Council from a decision of this Court of November 11 last in an appeal

to this Court under the provisions of section 74 of the Income Tax Ordinance, 1932. The appeal came up, on a question of law only, in the form of a case stated by the Board of Review.

Mr. de Silva, for the respondent, the Income Tax Commissioner, has opposed the application on two grounds: first, that no stamp duty has been paid, as required by law, on the proxy and application filed, and secondly, that the appellant has no right of appeal.

I will deal with the second point first. Section 74 of the Ordinance is silent on the question as to whether or not there is any appeal from the decision of this Court. It is urged for the appellant, however, that the proceeding is a "civil suit or action" within the meaning of section 4 of the Appeals (Privy Council) Ordinance, No. 31 of 1909, the Ordinance regulating the procedure on appeals to His Majesty in Council. That argument has been already replied to by the judgment of this Court in *Soertsz v. Colombo Municipal Council*¹.

In that case, the tribunal of appeal, under the Housing and Town Improvement Ordinance, No. 19 of 1915, had stated a case for the opinion of this Court under section 92 of that Ordinance. Section 92 in effect contains provisions on this question similar to those contained in section 74 of the Income Tax Ordinance. In the judgment I have cited, this Court held there was no right of appeal to the Privy Council from a judgment of this Court on a case stated under section 92. It was held that the decision of the Court on the point of law submitted in the case stated was not a judgment or order in a civil suit or action, as set out in the Charter of 1833 creating the right of appeal.

Mr. Nadarajah had to concede that this decision under the Housing Ordinance, given under a section of an Ordinance in almost identical terms, on this question was a difficulty in his way. He urged, however, that the application before us should be referred to a Bench of three Judges, for the matter to be reconsidered, if we were not in agreement with that decision.

I see no reason whatsoever to disagree with the decision in the case cited and would follow it in this application. The appellant therefore has no right of appeal from a judgment of this Court on a case stated under section 74 of the Income Tax Ordinance. Mr. de Silva concedes that on such a matter in England a party who feels aggrieved is entitled to go to the highest Court of Appeal that is open to His Majesty's subjects, but in Ceylon such a party is by the local Income Tax Ordinance debarred from that right.

It is not necessary, in these circumstances, to deal with the first question raised, the failure to stamp the documents as required by section 4 and Part II, Schedule B of the Stamp Ordinance, 1900. On that question I would, however, add that the appellant has not explained how he or the documents are exempted from the stamp duty set out.

The application must be dismissed with costs.

SOERTSZ A.J.—I agree.

Application dismissed.

¹ 38 N. L. R. 62.