

Present: Mr. Justice Wendt.

1908.

November 10.

In the Matter of "The Stamp Ordinance, 1890."

Stamps—Receipts granted by the Municipal Council—Liability for stamp duty—Ordinance No. 3 of 1890, ss. 37 and 38; Part I. of Schedule to Ordinance.

Receipts given by the Municipal Council for sums of money paid to them and exceeding Rs. 20 in amount are liable to the stamp duty of five cents imposed by Part I. of the Schedule to the Ordinance.

A PPEAL from a ruling of the Commissioner of Stamps. The facts sufficiently appear in the judgment.

Bawa, for the appellant (Municipal Council).

Walter Pereira, K.C., S.-G., for the respondent (Commissioner of Stamps).

Cur. adv. vult.

November 10, 1908. WENDT J.—

The object of this proceeding is to settle the question whether receipts given by the Municipal Council for sums of money paid to them and exceeding Rs. 20 in amount are liable to stamp duty. The appeal brought under section 38 of "The Stamp Ordinance, 1890," against the ruling of the Commissioner of Stamps under section 37, who held that the documents submitted to him was liable to the duty of five cents imposed by Part I. of the Schedule to the Ordinance, under the head "Receipt or discharge given for or upon the payment of money amounting to Rs. 20 or upwards." The document acknowledges the receipt on account of the Municipal Council of Colombo of the sum of Rs. 53.46, being the amount due for the rate of 13½ per cent. levied upon a certain specified tenement under section 127 of "The Municipal Councils' Ordinance, 1887," and is signed by the Shroff of the Council, being the officer authorized in that behalf by the Chairman, the executive officer of the corporation, under section 290 of that Ordinance. In law, therefore, the document in question may be regarded as signed and issued by the Chairman.

The contention of the appellants is that the document comes within the exemption created by the aforesaid schedule in favour of "Receipts or discharges given by any public officer in the execution of his office." Is, then, the Chairman a "public officer"? In the earlier Stamp Ordinances of 1871 and 1884 the exemption was stated thus:—"Receipts or discharges given by or to the Treasurer, any Government Agent, Fiscal, or his Deputy or officer, or other public officer in the execution of his office." Of the officers here

1908. specified the Treasurer or Government Agents certainly were
 November 10. appointed by the Crown, and drew their salaries from the Public
 Treasury; while at that time Fiscals, though appointed by the Crown,
 WENDT J. drew no such salary, "deputies" and "officers" were appointed
 by the Fiscals and remunerated out of fees. The only character-
 istics that might have been described as common to all the officers
 mentioned was that, to use a colloquial but vague expression, "they
 served the public." The exemption now in force, however, specifies
 no particular officers, and, therefore, gives no scope for the principle
 of *ejusdem generis*. Nor is any assistance in the interpretation of it
 to be derived from the other classes of exemptions, *e.g.*, in favour
 of bankers' receipts, receipts written on bills of exchange, releases
 or discharges by deed, &c. They appear to proceed on different
 grounds. Those I have just mentioned I suppose on the ground
 that stamp duty has already been paid, or will be paid in respect of
 the same money on another occasion. In the English Stamp Act
 of 1870 the exemption is in favour of any "receipt given by an officer
 of a Public Department of the State for money paid by way of
 imprest or advance, or in adjustment of an account, when he derives
 no personal benefit therefrom." I understand that payment here
 contemplated to be one made by one Department of State to another
 in which case the reason for the exemption is obvious. Does that
 afford a clue to the meaning of the exemption we are now consider-
 ing? Such exemption is not limited to payments by one State
 Department to another, but would embrace payments by private
 individuals as well. Was it then thought that the fact of the receipt
 being given by the officer "in the execution of his duty" would
 entitle him to be refunded the cost of the stamp out of public funds,
 and there would, therefore, be no sense in making him provide a
 stamp? The object of the Stamp Ordinance is to bring revenue into
 the Public Treasury, and I think that what I have just indicated is
 the true intent and meaning of the exemption. It operates in
 favour of officers of the State only. The proviso to the exemption
 favours this interpretation, because it contemplates officers receiving
 payments from the Treasury on account of salary and travelling
 allowances.

A stamp duty on receipt was first imposed by Regulation No. 2
 of 1817, which contained a proviso exempting from all duty contracts
 entered into with His Majesty's Government, and "receipts
 or acquittances made or given to or by the said Government
 or any of the public officers thereof." Regulation No. 7 of 1823
 (section 22) added to this the words "acting in its behalf." This
 section 22 was in the same terms re-enacted by Regulation No. 4
 of 1827, section 21, which in turn was re-enacted in the same way
 by Ordinance No. 6 of 1836, section 3. The next Stamp Ordinance,
 No. 2 of 1848, put the exemption into its schedule in these words:
 "Receipts or discharges given by or to any Government Agent,

Fiscal, or his Deputy or officer, or other public officer in the execution of his office," and the same form was adopted in Ordinance No. 19 of 1852, which was replaced by the Ordinance No. 11 of 1861. Ordinance No. 23 of 1871 inserted the words "the Treasurer" as already quoted.

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I have carefully considered the question whether these changes in the phraseology of the enactments were designedly made in order to evince the intention of extending the scope of the exemption so as to include officers of local bodies exercising administrative functions, and I have arrived at the conclusion that they were not. The expression "Government officer" in the execution of his office was first introduced by the Ordinance of 1848, when it occurred in the exemption under "agreement." Under bill of exchange the exemption was in favour of "the Treasurer of this Island or any other Government officer in the execution of his office." "Government officer in the execution of his office" appears to have been used as the equivalent of "public officer in the execution of his office," and I think this may equally be said of the Ordinance we are now construing. I do not think any assistance is to be derived from the definition of the terms "public servant" and "public officer" for the especial purposes of other enactments, such as the Penal Code (section 19), "The Public Servants' (Liabilities) Ordinance, 1899," and "the Public Officers' Security Ordinance, 1890," to which I was referred.

Municipal Councils were established in 1865 and Local Boards in 1876, and although the whole body of Stamp Law has been at least twice repealed and re-enacted since then, no unequivocal exemption in their favour under this head has been declared. This is the more significant when it is observed that the Stamp Ordinance of 1884, in defining the duties payable in Police Court proceedings, expressly exempted cases in which "the complaint or charge was made by an officer of Government or by a Police or Municipal officer in the execution of his duty." This provision is re-enacted in the Stamp Ordinance now under consideration. It shows that in the contemplation of the Legislature a "Municipal officer" was different from "an officer of Government." It also shows that the question of freeing Municipal Councils from the burden of the stamp duties had engaged the attention of the Legislature, and that the outcome was the limited exemption to which I have referred. Mr. Bawa argued that the Chairman of the Council was a "public servant," because he is appointed by the Governor, and, in the case of the Municipal Council of Colombo, must be an officer of the Civil Service of the Ceylon Government, and be paid out of the Colonial Treasury (sections 47 and 48 of Ordinance No. 7 of 1887). Inasmuch as the Chairman of the Municipal Councils of Kandy and Galle need not be members of the Civil Service, the success of Mr. Bawa's argument would involve the curious result that these latter

1908. Councils would be entitled or not entitled to the benefits of the
November 10. exemption according as their Chairman happened to be members
WENDT J. of the Civil Service or other "proper persons." I cannot think
that this result was intended. Besides, the present Chairman of the
Colombo Council, although appointed by the Governor, has (not
being Government Agent of the Western Province) to "devote the
whole of his time and attention to the duties of his office" of Chair-
man. He is seconded from the Civil Service, and has *pro. tempore*
ceased to be a member of it. His salary, though paid him out of
the Treasury, is paid into the Treasury by the Municipal Council.
I think that the liability or immunity of the Municipal Council as a
corporation must be determined irrespective of whether its Chairman
is or is not the holder of any other appointment. The Municipal
Council is not a Department of the State.

For these reasons I think that the ruling of the Commissioner of
Stamps is right, and I therefore dismiss the appeal.

Appeal dismissed.

