

1943

Present : Moseley A.C.J. and Keuneman J.

130—D. C. Ratnapura, 6,719.

NORIS *et al.*, Appellant, and ANGAMMANA, Respondent.*Appeal—Preliminary objection re inadequate stamps—No notice to appellant—Respondent deprived of costs.*

Where an appeal was dismissed on a preliminary objection taken by the respondent, viz., that inadequate stamps have been tendered in respect of the petition of appeal and the certificate in appeal and where notice of the objection had not been given to Counsel for the appellant,—

Held, that the respondent should be deprived of his costs.

APPEAL from a judgment of the District Judge of Ratnapura.

N. E. Weerasooriya, K.C. (with him *M. D. H. Jayawardene*), for the first, second, and third defendants, appellants.

N. Nadarajah, K.C. (with him *E. S. Dassenaik* and *H. W. Jayawardene*), for the plaintiff, respondent.

29 June, 1943. MOSELEY A.C.J.—

In this appeal objection was taken by Counsel for the respondent that inadequate stamps have been tendered in respect of the petition of appeal and the certificate in appeal. The position was that at the trial the first and second defendants were represented by one proctor and the third by another. After judgment, the proxy granted by the third defendant in favour of Mr. Joseph was revoked and a fresh proxy filed in favour of the proctor who was acting for the first and second defendants. So, at the time of filing the petition of appeal the three appellants were represented by the same proctor. It is not difficult, therefore, to discover how it came about that the documents were stamped as if they were one appeal instead of two. We felt, however, that we had no alternative but to uphold the objection and to reject the appeal even though it appeared to us that there was little, if any, merit in the objection. In view of the fact that notice of the objection had not been given to Counsel for the appellants and, in fact, the flaw in the stamping was only discovered just before the hearing, we proposed to deprive the respondent of his costs as is customary in such cases. Counsel for the respondent, however, sought to draw a distinction between an objection in respect of stamp duty and one for non-compliance with the provisions of section 756 of the Civil Procedure Code. It seems to me that if any distinction is to be drawn it should be in favour of an objection which falls into the latter class. The Courts in England have looked with disfavour upon objections based upon the failure to stamp a document, and in *Home Marine Insurance Co. v. Smith*¹, and *Genforsikrings v. de Costa*², that disfavour was manifested by depriving the successful party of his costs. Attention might usefully be directed to an examination of some observations which occur in *Donogh's Indian Stamp Law, 9th edition*, at page 332, whereat is cited the opinion of the General Council of the Bar in regard

¹ (1898) 1 Q.B. 829.

² (1911) 1 K.B. 137.

- to this matter. While the documents in respect of which objection was taken in the two cases which I have mentioned were fundamental to the success of the respective actions, I do not think that there is any difference in principle which should lead up to adopt a different attitude in respect of the documents under consideration in the present proceedings.

The appeal is therefore rejected without costs.

KEUNEMAN J.—I agree.

Appeal rejected.

