

1959

Present : Basnayake, C.J., and Pulle, J.

SAMARAKONE *et al.*, Appellants, and THE PUBLIC TRUSTEE *et al.*,
Respondents

S. C. 87c—D. C. Colombo, 16308/T

*Stamps—Testamentary proceedings—Appeal—Stamps for decree of Supreme Court—
Duty of appellant to furnish them—Stamp Ordinance, Schedule A, Part II,
Head F (Miscellaneous), Part III.*

In an appeal from a decision of the District Court in a testamentary proceeding, the proper stamps for the decree of the Supreme Court must be delivered together with the petition of appeal to the Secretary of the District Court as required by Part II, Head F—Miscellaneous of Schedule A to the Stamp Ordinance. Failure to do so is fatal to the reception of the appeal.

APPEAL from a judgment of the District Court, Colombo.

Sir Lalita Rajapakse, Q.C., with *H. A. Koattegoda* and *R. D. B. Jayasekera*, for Appellant.

H. V. Perera, Q.C., with *Walter Jayawardene*, for 1st Respondent.

S. D. Jayasundera, with *D. R. P. Goonetilleke*, for 3rd and 4th Respondents.

M. Tiruchelvam, Solicitor-General, with *H. L. de Silva*, Crown Counsel, as *Amicus Curiae* (On notice).

October 21, 1959. BASNAYAKE, C.J.—

This matter comes up for decision upon a submission made by the Registrar of this court that in appeal No. 87C the proper stamps for the decree of the Supreme Court have not been delivered to the secretary of the District Court together with the petition of appeal as required by Part II of Schedule A to the Stamp Ordinance, Head F—Miscellaneous.

Learned counsel for the appellant submits that this is an appeal in a testamentary proceeding and that the Part of Schedule A to the Stamp Ordinance applicable to such proceedings is Part III which contains the duties in Testamentary Proceedings. That Part he submits does not prescribe the stamp duty for the decree of the Supreme Court. He further submits that in an appeal from the District Court in a testamentary proceeding the decree of the Supreme Court is not liable to stamp duty. An examination of the items in Part III and the duties payable under that Part reveals that even as Part II under head "In the District Courts, A—In Civil Proceedings" contains only duties payable on proceedings in the District Court, so Part III contains only duties payable on testamentary proceedings in the District Court. Part III does not purport to nor does it prescribe duties payable on proceedings in the Supreme Court. On an appeal in a testamentary proceeding the decree of the Supreme Court is a document that has to be executed and sealed in that court and Part II under the heading "In the Supreme Court" provides the stamp duty payable on all civil proceedings in the Supreme Court. We are of the opinion that even in an appeal from a decision of the District Court in a testamentary proceeding the proper stamps for the decree of the Supreme Court must be delivered together with the petition of appeal to the Secretary of the District Court as required by Part II F—Miscellaneous of Schedule A to the Stamp Ordinance. Failure to do so is fatal to the reception of an appeal. (*Attorney-General v. Karunaratne*¹).

¹ (1935) 37 N. L. R. 57.

Learned counsel for the appellant relied on the case of *re Estate of Harry Douglas Graham*¹. We find ourselves unable to agree with that decision. Part III does not contain the duties payable on proceedings in the Supreme Court. They are in Part II under the head "In the Supreme Court". There is nothing in the tariff prescribed under that head that excludes appeals in testamentary proceedings therefrom.

The appeal is rejected with costs.

PULLER, J.—I agree.

Appeal rejected.
