1941 *Present :* **de Kretser J.**

DR. R. SARAVANAMUTTU *v.* JOSEPH DE SILVA.

IN THE MATTER OF AN ELECTION PETITION UNDER THE CEYLON (STATE COUNCIL ELECTIONS) ORDER-IN-COUNCIL, 1931, AS AMENDED BY THE CEYLON STATE COUNCIL ELECTIONS (AMENDMENT) ORDER-IN-COUNCIL, 1934 AND 1935.

Election petition—Objections by respondent—To be filed within reasonable time—Objection to security—Number of sureties—Objection to security bond—Appointment of agent—Form of appointment—Notice of petition—Stamping of act of appointment and proxy—Election (State Council) Petition Rules 9 and 16.

Objections to an election petition other than those provided for in the Election (State Council) Petition Rules must be taken within a reasonable time. The respondent should be confined to the objections he has filed and objections taken at the hearing cannot be entertained.

[1] *(1919) A. I. R. 203.* [2] *12 C. L. W. 9.*

Where security is given by bond with two sureties and the security required is Rs. 5,000, each surety must be worth the amount required.

Where the security bond filed described the petitioner as principal and two other persons as sureties, who bound themselves jointly and severally, and where the defeasance clause did not mention the name of the petitioner,—

***Held,* that the bond was sufficient to comply with the requirements of Rule 16.**

The requirement of Rule 9 that the appointment of agent must accompany the petition is directory. A writing which combines an appointment of an agent and an intimation to the Registrar of the appointment is sufficient for the purpose of Rule 9.

A proxy filed by a proctor is a sufficient notice by him of his appointment.

Notice of the filing of the petition and the nature of the security offered may be given by the agent. Failure to stamp the proxy and the writing filed with the petition does not invalidate the petition.

ON May 19, 1941, an election petition was filed against the return of the respondent as Member of the State Council for Colombo North.

On May 31, 1941, the respondent through his agent filed a statement of objections to the hearing of the petition on the ground that it was not in accordance with the law in that there had not been filed with the petition a proper and valid writing containing the appointment of the agent, that the document filed purporting to be the said writing bore no stamp and that the proxy filed was not duly stamped on the date of presentation. Objection was also taken to the sufficiency of the sureties.

On June 25, 1941, respondent filed an application praying that the petition be dismissed on the ground that the recognizance was not in accordance with the provisions contained in Rules 12 (2) and 16 of the Election (State Council) Petition Rules.

V. F. Gunaratne (with him *S. R. Wijayatilake* and *G. P. A. Silva*), for the respondent.—Rule 12 (2) of the Order-in-Council requires security to be given by recognizance with two sureties in the form set forth in Rule 16. According to that form those who enter into the recognizance should be jointly and severally liable. The recognizance of the petitioner is a deliberate departure from the form in Rule 16. It speaks of petitioner as principal and the others as sureties. Further, the sureties do not renounce the *beneficium ordinis*. Hence there is no joint and several liability among all three as is required by Rule 16. The subsequent use of the words "jointly and severally" in the latter part of the recognizance cannot nullify the effect of the collateral security created by the first part. When there are two inconsistent clauses in a deed, unlike in a will, the earlier one is retained and latter rejected (*Norton on Interpretation of Deeds, p. 89*).

The present case is distinguishable from *Vinayagamoorthy v. Ponnambalam*[1] where there is an express renunciation of the *beneficium ordinis*. Here the two sureties are not primarily liable. The defeasance clause shows the petitioner to be primarily liable. The distinction between the liability of the petitioner and that of the sureties in the first half of the bond is in fact maintained in the second half. In *Vinayagamoorthy v. Ponnambalam* (*supra*). All three names appear in both parts of the

[1] *40 N. L. R. 178.*

bond. Here there is a deliberate omission of the petitioner's name as being a party liable in the latter half of the bond. The word "said" in the second paragraph of the form in Rule 16 must refer to all those mentioned in the earlier paragraph (*Silva v. Karaliadde* [1]).

If recitals are ambiguous and the operative part is clear, operative part must prevail. (*Norton, p. 197.*) In the operative part petitioner is not made liable.

The last day for filing election petition was May 19. Rule 9 requires petitioner along with petition to file a writing appointing an agent. He has filed such a writing and also a proxy. Stamp Ordinance, Schedule A, item 37 requires this writing to be stamped with Rs. 5 stamp. Neither the writing nor the proxy was duly stamped. There is thus no regular appointment. Therefore there is no proper compliance with Rule 9. Petitioner comes on the 20th to Registrar's Office and affixes stamp on the proxy. This cannot create any legal effect inasmuch as the 19th was the last day for filing petition. Important consequence flows. If appointment of agent is bad, all acts done by him are bad. His notice therefore to the respondent in terms of Rule 18 is bad. Therefore there is no compliance with Rule 18. This is fatal—*Aron v. Senanayake* [2]; *Vinayagamoorthy v. Ponnambalam* [3].

Proxy is not the appointment in writing contemplated by Rule 9. Proxy gives no authority for acts outside Court. "Act generally in premises" means nothing more than is necessary for the particular acts previously mentioned *Perry v. Hall* [4]. Even if proxy is deemed to be the writing under Rule 9 it is also bad because it is not duly stamped.

Petitions of appeal not duly stamped are rejected. They cannot be cured. *Salgado v. Peiris* [5]; *Goonesekera v. Silva* [6]; *Mohamed Hassen v. Abdul Wahid and Mohamed Marikar* [7].

H. V. Perera, K.C. (with him *N. Nadarajah, J. E. M. Obeyesekera* and *H. W. Thambiah*), for the petitioner.—The respondent should be confined to the objections filed. In matters of procedure or practice not provided for by the Order-in-Council we have to follow the procedure and practice in England. See section 83 (4) Order-in-Council. Objections other than those provided for in the Order-in-Council should be taken within reasonable time—*The Oldham Petition* [8]. Therefore the respondent should not be permitted to advance objections as regards irregularity of notice under Rules 18 and 43.

The "writing" under Rule 9 is not a part of the petition. It is not essential that a writing should be filed and Rule 9 provides for a case where no such writing is filed. The petition cannot be rejected on this ground.

The proxy is a sufficient appointment and the fact that it was stamped out of time does not make it invalid. The object of stamping documents is for the purposes of revenue. Here the revenue has not suffered as the proper stamp has been affixed although a day late. The objection on this score is too formal. Rule 60 of the Parliamentary Election Petition Rules

[1] *1 C. L. W : at p. 21.*
[2] *5 C. L. W. 51.*
[3] *40 N. L. R. 173.*
[4] *29 L. J. Ch. 677.*
[5] *12 N. L. R. 379.*
[6] *5.C. W. R. 135.*
[7] *15 C. L. W. 61.*
[8] *19 Law Times Reports, New Series, p. 501.*

provides that no proceedings under the Parliamentary Elections Act, 1868, shall be defeated by any formal objection. This rule should be followed under section 83 (4) of the Order-in-Council.

The proxy form filed authorises the proctor "to do or perform such acts, matters, and things as may be needful and necessary" on behalf of the petitioner and therefore it is quite sufficient under Rule 9.

As regards the form of the recognizance the form given in Rule 16 is only a specimen. The mere use of the words "principal" and "sureties" does not nullify the joint and several liability created by the bond. The petitioner has described himself as principal because an order as to costs, &c., will be served against him.

Under Rule 12 (2) it is sufficient if one of the sureties has given the required security. Therefore the objection to the insufficiency of the security cannot succeed because the objection to the first surety has been withdrawn.

V. F. Gunaratne, in reply.—The necessity to give notice of objection to the non-compliance with Rule 18 does not arise in view of the fact that it is a corollary to the objection to the non-compliance with Rule 9. Once the regularity of the appointment under Rule 9 is questioned all acts done by the professed agent under Rule 18 are caught up.

The petition is not complete in the absence of the "writing" contemplated under Rule 9. The latter part of the rule which refers to addresses being left with the Registrar is no indication that the petition is still good despite the absence of a writing. That provision is there merely to safeguard the interests of the respondent who must secure his costs as against a petitioner who has not appointed an agent. Even if petition is bad, respondent must safeguard his costs. Unlike in Rule 10 where the respondent "may" appoint an agent, the use of the word "shall" in Rule 9 makes it obligatory on the petitioner to file a writing. If this is not complied with the petition should be rejected.

There is no rule in the Order-in-Council or in any Legislative Enactment which prevents preliminary objections being taken up for the first time at the trial. The practice is only to deny costs unless notice of objections is given.

While not conceding that this is a mere formal objection—even if it is so, Rule 60 of the Parliamentary Election Petition Rules does not apply. Our rules under the Order-in-Council are borrowed verbatim from the Parliamentary Rules, but Rule 60 finds no place in our rules. This must be treated as a deliberate omission in order that petitioners here might act in strict compliance with the procedure laid down.

Even if the writing under Rule 9 is not invalid because it is not stamped, that does not mean that it is valid. A species of inchoate right arises, the right becoming operative only when the stamp is affixed.

Section 14, Stamp Ordinance, requires instruments to be stamped "before or at time of execution". The consequence of subsequent stamping is that no public officer can act on it—section 35 Stamp Ordinance. If executant wants to remedy the defect, he cannot do it himself. The Stamp Ordinance prescribes the remedy. When impounded under section 32 and certified by Commissioner under section 44 (1), the document is made good but it has no retrospective effect. Contrast language

of section 44 (2) with language of section 42, section 38 and section 30 (3). In last three sections where the executant points out the default to the Commissioner retrospective effect is clearly given. Under section 44 (2) the default is detected by a public officer who it is who sends the document to the Commissioner of Stamps.

Subsequent cancellation of a stamp does not make it valid. *1925 A. I. R. Bombay, 520.*

An unstamped document, unless it is admissible under some special provision of law is mere waste paper for purpose of judicial proceedings. *1926 A. I. R. Allahabad, 360.*

The "writing" contemplated under section 9 unlike any other document forms the very foundation of the election petition. Therefore a "writing" not in compliance with section 9 cannot be cured at this stage so as to validate all acts which flowed from it.

Cur. adv. vult.

July 11, 1941. DE KRETSER J.—

The respondent was returned as the Member for Colombo North and the return was proclaimed in the *Gazette* of April 28, 1941. On May 19, the present election petition was filed. Along with the petition was filed an unstamped proxy and a writing, which is in the following form :—

The Registrar, Supreme Court, Colombo.

"SIR—With reference to the election petition I have filed to-day, I have the honour to inform you that I have and do hereby authorise Mr. Nagalingam Navaratnam, Proctor, Supreme Court, of No. 375, Dam street, Colombo, to act as my agent for the purposes of the said petition and that all notices relevant to the said petition may be served on him or left at the above-mentioned address.

(Signed) R. Saravanamuttu, M.B."

The Registrar minuted that the proxy was not stamped and on the following day a stamp was affixed to it. The person nominated as agent notified his appointment only on June 5.

On May 20, a recognizance was filed in the following form :—

"Be it remembered that on the twentieth day of May, in the year of Our Lord One thousand Nine hundred and Forty-one before me Guy O. Grenier, Registrar of the Supreme Court, came Dr. Ratnajothi Saravanamuttu of Retreat road, Bambalapitiya, Colombo, as principal and Nanasothy Saravanamuttu of No. 93, Silversmith street, Colombo, and Handunetti Ranulu Jayasundera of Dikwella, in the Matara District as sureties and acknowledged themselves jointly and severally to owe to Our Sovereign Lord the King the sum of Rupees Ten thousand (Rs. 10,000) to be levied of their property movable and immovable to the use of Our said Lord the King his heirs and successors. The condition of this recognizance is that if the said Nanasothy Saravanamuttu and Handunetti Ranulu Jayasundera or any of them shall well and truly pay all costs, charges and expenses in respect of the election petition signed by the said Dr. Satnajothi Saravanamuttu relating to the Colombo North Electorate which shall become payable by the said Dr. Ratnajothi Saravanamuttu under the Election (State Council)

Petition Rules as amended by the Ceylon State Council Election Amendment Orders in Council, 1934 and 1935, to any person or persons then this recognizance to be void, otherwise to stand in force."

Annexed thereto were two affidavits and two certificates of value of the two sureties named in the recognizance.

On May 21, the respondent had filed a writing appointing an agent, in the following form:—

"I hereby authorise Mr. Arthur S. Fernando of No. 22, Smith street, Hulftsdorp, Colombo, Proctor of the Supreme Court, to be my agent for all purposes of any election petitions that have been filed or may hereafter be filed against me in the Supreme Court of Ceylon, in connection with the Colombo North Election held on the 26th day of April, 1941, and I hereby also authorise the Registrar of the Supreme Court to issue to him all documents and papers thereof as he may deem necessary."

On May 31, the agent gave notice of his appointment and filed a statement of objections to the hearing of the petition on the ground that it was not in compliance with the law in that there had not been filed with the petition a proper and valid writing containing the appointment of an agent inasmuch as the document filed and purporting to be the said writing bore no stamp and inasmuch as the proxy filed, if it be taken to be the writing required by Rule 9, was not duly stamped on the date of presentation and was stamped too late. Objection was also taken to the sufficiency of the sureties.

On June 25, the Proctor for respondent filed an application praying that the petition be dismissed on the ground that the recognizance was not in accordance with the provisions contained in Rules 12 and 16. From the Registrar's minute it would appear that the respondent's agent produced his letter of authority on May 21, and was then handed a copy of the petition and he perused the recognizance filed the previous day.

Rule 18 requires that notice of the presentation of a petition and of the nature of the proposed security accompanied by a copy of the petition shall within ten days of the presentation thereof be served by the petitioner on the respondent. The service may be effected by delivery to the agent of the respondent.

Rule 19 requires the respondent within five days of service to object in writing to the sufficiency of the sureties. From a statement made by Mr. Gooneratne I understood that notice was given, and he sought to add to his objections the grievance that the notice had been given by the petitioner's agent and not by the petitioner himself. He also sought to enlarge his objections by stating that there were four charges in the petition and therefore the security should have been in the sum of Rs. 7,000 at least.

The objection to the surety N. Saravanamuttu was withdrawn. The objection to the other surety was pressed, and that objection must, in my opinion, succeed. The valuation report given by the Police Headman of Dikwella does not appear to have been issued with any sense of responsibility. It refers to a land called Thundahewatta, "containing in extent ¾ acres 1 rood and 6 perches", and gives the name of the Notary

attesting the title deed incorrectly. From the evidence adduced for the respondent it appears that the property is 32.6 perches in extent, and that on January 5, 1940, the surety had purchased it for Rs. 2,000. There is also a report by one William Neil de Alwis, who states that he values the property at about Rs. 2,500 and explains that it is only an approximate valuation and that he has not been able to arrive at a precise and accurate assessment. In my opinion the property cannot be valued at more than Rs. 3,000, and as the objections have been based on the footing that the security required was Rs. 5,000 I shall take no notice of the attempt now being made to raise it to Rs. 7,000 but shall order that the deficiency be made good in the manner provided by Rule 13, *i.e.*, by the deposit of a sum of Rs. 2,000 within the period allowed by Rule 21.

Mr. Perera did not press his contention that one security would be sufficient. The language of Rule 12 (2) and of Rule 19 makes it plain that *each* surety must be worth the required amount. I find that under the English Act one surety would be enough but that is because the English rule requires that there shall be "not more than four sureties" while our Rule 12 (2) definitely fixes the number at two.

I pass to the objection regarding the *form* of the recognizance. The objection was that Rule 16 set out a form and according to that form the persons named in the recognizance were to be bound jointly and severally whereas in the bond filed the petitioner has been described as principal and the two others as sureties, and the two sureties not having renounced the *beneficium ordinis* they would not be bound jointly and severally, the words to that effect being ignored because they were inconsistent with the earlier words which ought to prevail in a document of this nature. Objection was also taken to the defeasance clause in the recognizance—which Counsel called the operative clause—in that the petitioner did not appear therein as a party. The argument was presented with great enthusiasm and eloquence and in a much more varied and less compendious form but I have stated the substance of the objection. A very similar objection was dealt with by Maartensz J. in the case of *Vinayagamoorthy v. Ponnambalam*[1] In my opinion the objection is not entitled to prevail.

Rule 12 recognizes that the sureties are persons other than the petitioner who is liable as principal for costs. When therefore in the recognizance filed the petitioner was described as principal that was merely a plain statement of fact and in no way invalidated the recognizance. The sureties bound themselves jointly and severally with the principal. By doing so they were clearly enlarging their liability. Besides, the use of inappropriate words cannot alter the nature of the obligation (*Wijeyawardene v. Jayawardene*[2]).

I would mention a matter that may deserve attention some day. The objection arises from a reading of Rule 12 (2) without refernce to Rule 12 (1), which does not require that the petitioner should give security personally, for he would be liable to pay costs if an order were made against him, but what the Rule requires is that security should be given *on his behalf*. It may be given by recognizance or deposit of money or both. The provision is a close adaptation of sub-sections (4) and (5) of

[1] *40 N. L. R. 178.* [2] *26 N. L. R. 193.*

section 6 of the Parliamentary Elections Act of 1868, which is quite clear on the point, viz., that the recognizance is by the sureties ; and in fact it was held in *Pease v. Norwood* [1], that the petitioner himself could not be a party to the recognizance. Rule 12 (2) is misleading and is capable of the interpretation that the recognizance should be given by the petitioner along with sureties, but in my opinion the parenthetical clause "with two sureties" was only intended to indicate the number of the sureties and that the form would be filled in with the names of the two sureties. This view is supported by the fact that the form in Rule 16 has only two blanks and it is only in the defeasance clause that provision is made for the appearance of the petitioner's name. Rule 15 and the first part of Rule 16 refer to the sureties alone. The matter, however, is not free from doubt and was not discussed before me.

I pass now to the objection regarding the appointment of an agent. The agent contemplated by Rule 9 is not the same as the election agent. In England he must be a person "entitled to practise as an attorney or agent in cases of election petitions". In Ceylon he must be a person entitled to practise as a proctor of the Supreme Court. In England the Master is required to keep a roll for entering the names of persons entitled to practise as such agents, and he may allow any person upon the roll of attorneys for the time being to subscribe the roll so kept. In Ceylon Rule 42 entitles a proctor of the Supreme Court to act as agent and no separate roll is provided for.

Respondent's Counsel urged that there was no provision in the rules for notice of objection to be given, and on this plea he sought to enlarge his objections by taking exception to the form of writing filed and by drawing attention to the fact that the petitioner's agent had not complied with Rule 43, which requires an agent immediately upon his appointment to leave written notice thereof at the office of the Registrar. If this contention were sound it might be argued—and in my opinion with more reason—that the rules having provided for certain types of objection no other objections should be entertained. It would be manifestly unfair to the opposite party to have objections sprung upon him and such a procedure would offend against the canons usually obtaining in all Courts of law. But Mr. Perera met this argument effectively when he drew attention to the fact that section 83 (4) provided that in any matter of procedure or practice not provided for by the orders or rules the procedure or practice in England shall be followed. In the case of *The Oldham Petition* [2] Willes J. held that objections other than those provided for must be taken in a reasonable time. In my opinion the respondent ought to be confined to the objections which he filed, and objections taken only at the hearing cannot be considered objections taken within a reasonable time. As the matter is not without interest I shall however express an opinion on the objections taken.

Respondent's Counsel argued that the appointment of an agent must accompany the petition and that the petition should be rejected if that were not done. He based his argument on Rule 9 and stressed the use of the word *shall*, contrasting it with the use of the word *may* in Rule 10. Now, provision for the manner of filing an election petition is made in

[1] *(1869) L. R. 4, C. P. 235.*

[2] *19 Law Times Reports, New Series, p. 501.*

Rules 3, 4, 5, and 6, and when those rules have been complied with the petition is in order. What is provided for in Rule 9 is something separate. It is true that Rule 9 provides that the appointment of an agent should accompany the petition but that does not make it a part of the petition, and Rule 9 expressly provides for the case where no such writing is filed. The consequence is *not* that the petition is to be rejected but that the petitioner has to put himself to the trouble and inconvenience of attending at the office of the Registrar in order to ascertain what steps, if any, the opposite party has taken. If, therefore, no writing is filed till a later date, what happens is that in the interval the petitioner is liable to suffer the inconvenience I have just mentioned. In the rule the word "shall" is not imperative but directory, in the same way in which "shall"—in Rule 12 (2) for example—does not make the form in Rule 16 obligatory for Rule 16 itself indicates that the form is merely a model. In Rule 10 the word "shall" could not have been used because the respondent is there given the option of appointing his agent even before an election petition has been filed. It is plain that once the matter comes before a Judge the proper and wise course would be for the petitioner to have legal assistance and to leave an address for service at which notices may be left, and that is all Rule 9 seeks to bring home to the petitioner.

With regard to the *form* of the writing, I agree with Maartensz J. that the form given in *Rogers on Elections* (*Vol. II., p. 524*) is a model which may well be followed. It is both formal and extremely simple. In the case before Maartensz J. (40 *N. L. R.* 178) a form of proxy ordinarily filed in civil proceedings had been used and he had not before him any other writing. He refused to accept the argument that Rule 9 only required an intimation to the Registrar of the name of the agent. That is the impression which Rule 9 gives at first sight. I agree with Maartensz J. that the rule requires the appointment of an agent to be in writing and it is that act of appointment which must be left at the office of the Registrar. It is that writing which gives the name of the person. In Rule 10 too the writing appoints a person. The two provisions mean the same thing.

The writing filed in the present case is a combination of an intimation to the Registrar and an appointment. I think it sufficiently complies with the requirements of Rule 9. In proceedings following on election petitions it is not the policy of the law to place obstacles in the way of the petition being heard, and Rule 60 of the rules framed under the Parliamentary Elections Act of 1868 provides that no proceedings shall be defeated by reason of any formal objection. From the point of view of the respondent the formality of the appointment is of no consequence, and it ought to be as convenient for him to forward all notices to a prescribed address as to leave them at the office of the Registrar.

Rule 43 was not strictly complied with inasmuch as the agent who was appointed on May 19 did not give formal notice till June 5. He had, however, filed his proxy on the former date, and that was a fair indication that he was acting for the petitioner, who had already notified the agent's appointment. In any case the delay on his part cannot affect the validity of the petition. If the Registrar had any doubt as to his willingness to

act as such agent, or if the opposite party had any such doubt by reason of his not having left written notice, the agent's default might have justified their ignoring his existence, but no such contingency arose.

With regard to the objection that notice of the petition and of the security was given by the petitioner's agent, I see no reason why that should not be done. The maxim *qui fácit per alium facit per se* would apply. The rule only states whose the responsibility is and is not intended to mean that the petitioner personally should give notice. The object of the rule is to ensure that the respondent receives notice. When the agent, in terms of his appointment, took delivery of the petition and perused the recognizance, further notice was not required and the respondent has in reality had notice twice over and in fact has acted on the notice by filing his objections to the sufficiency of the sureties. What the respondent is doing is to stress formal defects and this Court will not entertain objections of a purely formal nature, which have caused no manner of prejudice.

The main objection taken was on the omission to stamp both the writing and the proxy. I find some difficulty in understanding the need for a proxy when once a proper writing has been filed. I see no objection to the ordinary proxy form being adapted for use though it is generally quite unsuitable. It was conceded by Mr. Perera for the petitioner that both documents required to be stamped. The effect of a document not being stamped is not to invalidate the document but to place it under the disability of not being recognized by any public officer or received in evidence.

The Stamp Ordinance is concerned with the recovery of the duty imposed and many provisions have been made to secure this effect. It requires stamps to be cancelled (section 7) so that they cannot be used again. It imposes a duty on notaries and on Government and bank officials to examine documents and to see that they are stamped (section 8). In section 14 it requires instruments to be stamped before or at the time of execution. That is what ought to be done and section 62 provides penalties designed to secure the due stamping of instruments. Persons in doubt may apply for the Commissioner's adjudication. Section 30 (3) states the effect of complying with the Commissioner's adjudication, viz., the instrument becomes receivable in evidence and may be acted upon and registered as if it had originally been duly stamped. Section 32 requires persons entitled to receive evidence and public officers to impound instruments which are not duly stamped. When impounded a public officer is required to send it to the Commissioner, and when the Commissioner has recovered the duty the instrument is receivable in evidence and may be acted upon as if it had been duly stamped (section 44). I am taking the general rule and not the exceptional cases. It has been argued that there being a difference in phraseology between section 30 (3) and section 44 (2) in the latter case the instrument acquires validity only at the date when the defect is cured. That is not correct. The sections state the effect quite plainly. The date of the instrument is not advanced but the disadvantage attaching to it is removed as from its inception. If in section 30 (3) the word "originally" had been omitted the meaning would have been still the same. Attention was also invited

to section 42. That section deals with instruments executed out of Ceylon and is irrelevant for the purposes of this case, but here again the instrument is given force and validity from its very inception. Section 35 permits certain documents being received in evidence on the prescribed penalty being paid. There is not a word regarding their validity or effect and it would be extraordinary if a document was valid in a Court of law from its inception and not equally valid when stamp duty had been recovered otherwise. The matter is really clear beyond any manner of doubt. When in *Vinayagamoorthy v. Ponnambalam* (*supra*) Maartensz J. said it was too late to stamp the proxy he meant, in my opinion, to say that it was only when stamped that it could be recognized and the time for recognizing it had passed.

The only question now is how the duty should be recovered. The Registrar should have impounded the instruments. He may still do so and forward them to the Commissioner. The two instruments referred to will be impounded and the Registrar is directed to forward them to the Commissioner of Stamps.

Each party has succeeded to some extent and each will therefore bear his own costs.

All objections except one overruled.