

1937

*Present; Fernando A.J.*FERNANDO *v.* PEIRIS *et al.*207—*C. R. Panadure, 5,491.*

Stamps Ordinance—Bond insufficiently stamped—Admission in evidence—Objection in appeal—Ordinance No. 22 of 1909, ss. 36 and 37 (2).

Where a document has been admitted in evidence in the Court of first instance the admission of the document cannot be questioned in appeal.

Where the document is insufficiently stamped the Court of Appeal may take appropriate action in terms of section 37 (2) of the Stamps Ordinance.

A PPEAL from a judgment of the Commissioner of Requests, Panadure.

L. A. Rajapakse (with him *Soorasangaram*), for defendant, appellant.

G. P. J. Kurukulasuriya, for plaintiff, respondent.

Cur. adv. vult.

July 7, 1937. FERNANDO A.J.—

The main point that was argued by Counsel for the appellant was that the document P 1 on which the plaintiff brought this action was a bond, and as such has not been properly stamped in terms of item 15B of the Schedule to the Stamp Ordinance. That schedule requires the bond to be stamped with a stamp of Re. 1 whereas the stamp affixed on the document was only 50 cents.

Counsel for the respondent argues that in view of the provisions of section 37 of the Stamp Ordinance, it is no longer open to this Court to question the admission of the document. The effect of that section is in my opinion that once a document has been admitted in the Court of first instance, the admission of such document cannot be questioned in the Court of Appeal, but if the Court of Appeal is satisfied that the document is not sufficiently stamped, then action may be taken in terms of section 37 (2) which enables the Court to send the document to the Commissioner of Stamps for necessary action. The reason appears to be that where a document has not been sufficiently stamped, the loss to the revenue can

be recovered by appropriate action, but as between the parties, the validity of the document cannot be questioned. Section 36 provides that the Court of first instance may, if satisfied that the stamp is insufficient, allow the document to be admitted in evidence on payment of the deficiency of stamp duty and a penalty, and as long as the party producing the document is prepared to pay the deficiency and the penalty, the document must be admitted, and the rights of the parties determined on such document. The position of the parties in the Appeal Court is exactly the same, and although the Appeal Court may order the necessary steps to be taken for the recovery of the deficiency, the action cannot be dismissed because of such deficiency. The principle of law is clear, and I do not think it necessary to discuss the authorities which were cited before me.

The document has been drawn up in the form of a bond, but it has not been notarially attested as is usual with bonds conditioned for the payment of money. The amount of the deficiency according to the Counsel for the appellant is only 50 cents and I do not think this is an appropriate case for action under section 37 (2). I would accordingly dismiss the appeal with costs.

Appeal dismissed.
