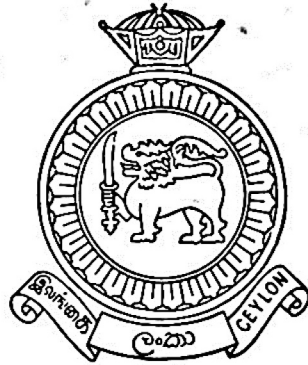


PARLIAMENT OF CEYLON

2nd Session 1971-72



Stamp (Amendment) Act, No. 50 of 1971

Date of Assent : November 8, 1971

Printed on the Orders of Government

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AN ACT TO AMEND THE STAMP ORDINANCE.

[Date of Assent: November 8, 1971.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Stamp (Amendment) Act, No. 50 of 1971, and shall come into operation on such date as may be appointed by the Minister by Order published in the *Gazette*.

Short title
and date of
operation.

2. Section 34 of the Stamp Ordinance (hereinafter referred to as the "principal enactment") is hereby amended, by the substitution, for all the words from "shall, on demand" to the end of that section, of the words "shall give a duly stamped receipt for the same."

Amendment of
section 34 of
Chapter 247.

3. Section 38 of the principal enactment is hereby repealed and the following new section substituted therefor:—

Replacement of
section 38 of
the principal
enactment.

"Power of
public officers
other than
police officers to
impound and
examine
instruments.

38. Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument chargeable in his opinion with duty is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not stamped with a stamp of the value and description required by the law in force in Ceylon when such instrument was executed or first executed, impound such instrument, and examine such instrument in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in Ceylon when such instrument was executed or first executed:

Provided that nothing herein contained shall be deemed to require any Magistrate or Judge of a criminal

court to impound or examine, if he does not think fit so to do, any instrument coming before him in the course of any proceeding.”.

Replacement of section 39 of the principal enactment.

4. Section 39 of the principal enactment is hereby repealed and the following new section substituted therefor:—

“ Commis-
sioner may
require public
officers to
impound or
examine
instruments.

39. (1) The Commissioner may, where he thinks fit so to do, require any person in charge of a public office, before whom any instrument chargeable with duty is produced or comes in the performance of his functions—

(a) to impound such instrument; or

(b) to examine such instrument in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in Ceylon when such instrument was executed or first executed.

(2) Where any person is under subsection (1) required to impound or examine any instrument, it shall be the duty of such person to impound or examine such instrument, as the case may be, and take such further steps as may be required by the Commissioner.

(3) Any officer of the Department of Inland Revenue who is authorized by the Commissioner in that behalf may, after giving due notice to any person in charge of a public office, examine any instrument in such public office in order to ascertain whether such instrument is stamped with the stamp of the value and description required by the law in force in Ceylon when such instrument was executed or first executed.

(4) For the purposes of section 38 and this section, in cases of doubt, the Minister may determine—

(a) what offices shall be deemed to be public offices; and

(b) who shall be deemed to be persons in charge of public offices.”.

5. Section 46 of the principal enactment is hereby amended as follows:—

Amendment of section 46 of the principal enactment.

(1) in sub-section (1) of that section, by the substitution in paragraph (b) of that sub-section, for the words "he shall require", of the words "he shall by notice in writing require"; and

(2) by the repeal of sub-sections (2), (6), (7) and (8) of that section.

6. Section 50 of the principal enactment is hereby amended by the substitution, for the expression "provisions of section 33", of the expression "provisions of this Ordinance".

Amendment of section 50 of the principal enactment.

7. Section 51 of the principal enactment is hereby repealed and the following new section substituted therefor:—

Replacement of section 51 of the principal enactment.

"Stamp duty or penalty paid in excess to be refunded.

51. (1) If it is proved to the satisfaction of the Commissioner by claim duly made in writing within three years of the date of the payment of any stamp duty or penalty, that any person has paid any stamp duty or penalty in excess of the amount properly payable by him, such person shall be entitled to have refunded the amount so paid in excess:

Provided that, notwithstanding anything in section 59, nothing in this section shall operate to extend or reduce any time limit for appeal or repayment specified in any other section or to validate any objection or appeal which is otherwise invalid or to authorize the revision of any matter which has become final and conclusive.

(2) Where through death, incapacity, bankruptcy, liquidation, or other cause, a person who would but for such cause have been entitled to make a claim under sub-section (1) is unable to do so, his executor, trustee, or receiver, as the case may be, shall be entitled to have refunded to him for the benefit of such person or his estate any stamp duty or penalty paid in excess within the meaning of sub-section (1). "

Repeal of
section 54 of
the principal
enactment.

Amendment of
section 55 of
the principal
enactment.

8. Section 54 of the principal enactment is hereby repealed.

9. Section 55 of the principal enactment is hereby amended as follows:—

(1) by the repeal of sub-section (1) of that section, and the substitution therefor, of the following new sub-section:—

“(1) If any instrument chargeable with stamp duty is executed in Ceylon and is not duly stamped, then, every person who, under the provisions of this Ordinance, is liable to pay the stamp duty or to bear the expenses of providing the proper stamps, as the case may be, shall be liable to pay to the Commissioner the stamp duty and any penalty attached to the non-payment of such duty:

Provided, however, that where the Commissioner, having regard to the circumstances of the case, is of the opinion that it is not practicable to recover such duty and penalty from such person, then, any other party to such instrument shall be liable to pay such duty and penalty.”;

(2) in sub-section (2) of that section, by the substitution, for the words “every person in Ceylon who has executed the instrument and every person in Ceylon using the instrument in any way”, of the words “every person in Ceylon who has been a party to the instrument”;

(3) by the repeal of sub-section (3) of that section; and

(4) by the insertion, immediately after sub-section (4) of that section, of the following new sub-section:—

“(5) An executor of a deceased person shall be liable to do all such acts, matters and things as such deceased person would be liable to do under this Ordinance if he was alive, and shall be chargeable with stamp duty with which such deceased person would be chargeable if he was alive in respect of all instruments to which such deceased person was a party prior to the date of the death of such person:

Provided that—

- (i) no proceedings shall be instituted against the executor in respect of any act or default of the deceased person,
- (ii) the liability of an executor under this sub-section shall be limited to the sum of—
 - (a) the deceased person's estate in his possession or control at the date when notice is given to him that liability to stamp duty will arise under this sub-section; and
 - (b) any part of the estate which may have passed to a beneficiary.

10. The following new Chapters are hereby inserted immediately after Chapter IV, and shall have effect as Chapter IVA and Chapter IVB respectively, of the principal enactment:—

Insertion of new Chapters IVA and IVB in the principal enactment.

CHAPTER IVA

A—APPEALS TO THE COMMISSIONER

Appeals to the Commissioner.

58A. (1) Any person who is aggrieved by the amount required to be paid by the notice issued under section 46 (1) (b) may, within a period of thirty days after the date of the notice, appeal to the Commissioner against such amount:

Provided that the Commissioner, upon being satisfied that owing to absence from Ceylon, sickness or other reasonable cause, the appellant was prevented from appealing within such period, shall grant an extension of time for preferring the appeal.

(2) Every appeal shall be preferred by a petition in writing addressed to the Commissioner and shall set out the grounds of such appeal.

(3) Every petition of appeal which does not conform to the provisions of sub-section (2) shall not be valid.

(4) On receipt of a valid petition of appeal, the Commissioner may cause further inquiry to be made by an Assessor, and if in the course of such inquiry an agreement is reached as to the matter specified in the petition of appeal, the necessary adjustments of the amount shall be made.

(5) Where no agreement is reached between the appellant and the Assessor in the manner provided in sub-section (4), the Commissioner shall, by notice given in writing to the appellant, require the appellant to transmit to him within a period of thirty days after the date of such notice, a list of documents upon which, and the names and designations of persons on whose evidence, the appellant proposes to rely in support of his appeal.

(6) The Commissioner shall, as soon as may be after the transmission to him of the list referred to in sub-section (5), give notice in writing to the appellant of his determination on the appeal.

(7) Before making his determination on any appeal, the Commissioner may, if he considers necessary to do so, by notice given in writing to the appellant—

(a) require the appellant within the period specified in the notice, to produce, or transmit, for inspection by the Commissioner any document specified in the list transmitted by him to the Commissioner;

(b) require the appellant in person or by authorized representative to be present, together with such documents and witnesses as may be specified in such notice, at such place and on such date and at such time as may be specified in the notice, to be heard on such matters relating to the appeal as may be specified in such notice; and

(c) require the appellant within the period specified in the notice to furnish the written evidence, on affidavit or in such other manner as may be specified in the notice, of any person mentioned in the list transmitted to the Commissioner by the appellant.

(8) Where any appellant fails to comply with the requirements of any notice given under sub-section (5) or sub-section (7), the Commissioner shall dismiss the appeal:

Provided that if the appellant shall within a reasonable time after the dismissal of an appeal satisfy the Commissioner that he was prevented from complying with the requirements of such notice by reason of absence from Ceylon, sickness or other unavoidable cause, the Commissioner may vacate the order of dismissal.

(9) The Commissioner shall have power to summon any person whom he may consider reliable to give evidence respecting the appeal to attend before him and may examine such person on oath or otherwise. Any person so attending may be allowed by the Commissioner any reasonable expenses necessarily incurred by such person in so attending.

(10) Before making his determination on any appeal, the Commissioner may, if he considers it necessary to do so, by notice given in writing to any person require that person to produce for examination, or to transmit to the Commissioner within the period specified in such notice any such deeds, plans, instruments, books, accounts, trade lists, registers, cheques, paying-in-slips, auditors' reports or other documents in his possession as may be specified in such notice.

(11) Where the Commissioner requires the appellant or his authorized representative to be heard on any matter relating

to the appeal and specified in the notice given under sub-section (5) the appellant shall not at such hearing be allowed—

(a) to produce any document which is not included in the list furnished under sub-section (5) or to record the evidence of any witness whose name does not appear in that list, or

(b) to raise any point which is not specified in the petition of appeal.

(12) The Commissioner may in disposing of an appeal under this section confirm, reduce, increase or annul the amount against which such appeal was made.

B—APPEALS TO THE BOARD OF REVIEW

Appeals
to the
Board of
Review.

58B. Any person aggrieved by the decision of the Commissioner upon any appeal made to him under section 58A may appeal from that decision to the Board of Review constituted under the Inland Revenue Act, No. 4 of 1963, and the provisions of that Act relating to appeals to such Board of Review shall *mutatis mutandis* apply to an appeal under this section.

C—APPEALS TO THE SUPREME COURT

Appeal on a
question of
law to the
Supreme Court.

58C. (1) The decision of the Board of Review shall be final:

Provided that either the appellant or the Commissioner may make an application requiring the Board of Review to state a case on a question of law for the opinion of the Supreme Court. Such application shall not be entertained unless it is made in writing and delivered to the Clerk to the Board of Review together with a fee of fifty rupees, within one month of the date of the decision of the Board of Review. If the decision of the Board of Review shall be notified to the Commissioner or to the appellant in writing, the date of

the decision, for the purposes of determining the period within which either of such persons may require a case to be stated, shall be the date of the communication by which the decision is notified to him.

(2) The stated case shall set forth the facts relating to the decision of the Board of Review and the amount of the stamp duty or the penalty in dispute where such amount exceeds five thousand rupees, and the party requiring it shall transmit the case, when stated and signed, to the Supreme Court within fourteen days after receiving the same.

(3) For the purpose of the application of the provisions of this Ordinance—

(a) all proceedings before the Supreme Court on any case stated under this section or the notification of the hearing, determination and the disposal of any such case, shall be deemed to be civil proceedings before the Supreme Court of the value of five thousand rupees, or of such greater amount as may be set forth by the Board of Review under subsection (2) as the amount of the stamp duty or penalty in dispute;

(b) every such case stated shall, together with all books, documents and papers annexed thereto by the Board of Review, be deemed to be a single exhibit in civil proceedings before the Supreme Court; and

(c) the Commissioner, if he is the appellant, shall be deemed to be a Government officer suing, or if he is the respondent to the appeal, a Government officer being sued, in a suit *virtute officii*.

(4) At or before the time when he transmits the stated case to the Supreme Court, the party requiring it shall send to the other party notice in writing to the effect that the case has been stated on his application and shall supply the other party with a copy of the stated case.

(5) Any two or more Judges of the Supreme Court may cause a stated case to be sent back for amendment, and thereupon the case shall be amended accordingly.

(6) Any two or more Judges of the Supreme Court shall hear and determine any question of law relating to the stated case and may in accordance with the decision of the Court upon such question confirm, reduce, increase, or annul the amount determined by the Board of Review or may remit the case to the Board of Review with the opinion of the Court thereon. When a case is so remitted by the Court the Board of Review shall revise the amount as the opinion of the Court may require.

(7) In any proceedings before the Supreme Court under this section, the Court may make such order in regard to costs in the Supreme Court and in regard to the sum paid under sub-section (1) as to the Court may seem fit.

D—GENERAL

Amount or
amended
amount to
be final.

58D. Where no valid appeal has been lodged within the time specified in this Ordinance against the amount required to be paid, or where agreement is reached under section 58A (4) or where such amount has been determined on appeal, the amount as required to be paid, or reduced or increased or confirmed on appeal, as the case may be, shall be final

and conclusive for all purposes of this Ordinance as regards the amount to be paid:

Provided that nothing in this Ordinance shall prevent the Commissioner from requiring the payment of any other amount which does not involve re-opening any matter which has been determined on appeal.

CHAPTER IVB

PAYMENT AND RECOVERY OF STAMP DUTY AND PENALTY

Provisions
regarding
payment of
stamp duty
or penalty.

58E. (1) The stamp duty or penalty required to be paid by notice issued under section 46 (1) (b) shall be paid in the manner directed in the notice or in any other notice given to the person liable to pay such duty or penalty, on or before a date specified in such notice. Subject to the provisions of sub-section (2), any stamp duty or penalty not so paid shall be deemed to be in default and the person by whom such duty or penalty is payable or, where any such duty or penalty is payable by more than one person or by a partnership, then each of such persons and each partner in the partnership shall be deemed to be a defaulter for the purposes of this Ordinance.

(2) The amount of the stamp duty or the penalty shall be paid notwithstanding any appeal against the amount, unless the Commissioner orders that payment of such duty or penalty or any part thereof be held over pending the result of such appeal, and the amount of the duty or penalty or part thereof so held over shall be deemed not to be in default.

(3) Where the Commissioner is of opinion either that the stamp duty or the penalty or any part thereof held over under sub-section (2) is likely to become irrecoverable, or that the appellant is unreasonably delaying the prosecution of his appeal, he may revoke any order

made under that sub-section and make such fresh order as the case may appear to him to require and the amount of any stamp duty or penalty not paid on or before such date as may be specified in the fresh order shall be deemed to be in default.

(4) Where, according to the final determination of an appeal under Chapter IVA, or upon any order made by the Commissioner, any stamp duty or penalty which has been held over under sub-section (2) becomes payable or the amount required to be paid is increased, the Commissioner shall give to the appellant a notice in writing fixing a date on or before which any amount of stamp duty or penalty or balance of stamp duty or penalty shall be paid. Any amount not so paid shall be deemed to be in default.

(5) Where any amount of stamp duty or penalty is in default, the Commissioner may in his discretion order that a sum or sums not exceeding twenty *per centum* in all of the amount of stamp duty or penalty in default shall be added to such amount and recovered therewith.

(6) Where, upon the final determination of an appeal under Chapter IVA, any amount in default to which any sum or sums under sub-section (5) has or have been added is reduced, then such sum or sums shall be calculated on the amount so reduced.

Amount in default to be a first charge.

58F. Any amount in default shall be a first charge upon all the assets of the defaulter:

Provided that—

- (i) such charge shall not extend to or affect any assets sold by the defaulter to a *bona fide* purchaser for value prior to the seizure of the same in accordance with the provisions of section 58G; and

- (ii) as regards immovable property, the amount in default shall not rank in priority to any lease or encumbrance created *bona fide* for value and registered prior to the date of such seizure.

Recovery of
amount by
seizure and
sale.

58G. (1) (a) Where any amount is in default, the Commissioner may issue a certificate to a Government Agent, Assistant Government Agent, Fiscal or Deputy Fiscal containing particulars of such amount and the name of the defaulter, and the officer to whom such certificate is issued shall be empowered and is hereby required to cause the amount to be recovered from the defaulter named in the certificate by seizure and sale of his movable property.

(b) The said seizure shall be effected in such manner as the said officer shall deem most expedient in that behalf, and any property so seized shall be kept for five days at the costs and charges of the defaulter. If the defaulter does not pay the amount in default together with the costs and charges within the said five days, the Government Agent, Assistant Government Agent, Fiscal or Deputy Fiscal shall cause the said property to be sold by public auction.

(c) The sum realized by the sale shall be applied—

- (i) firstly, in payment of the costs and charges of seizing, keeping and selling the property, and
- (ii) secondly, in satisfaction of the amount in default,

and any balance shall be restored to the owner of the property seized.

(2) Where any amount is in default and the Commissioner is of opinion that recovery by the means provided in sub-section (1) is impracticable or inexpedient, he may issue a certificate to a District Court having jurisdiction in any district where the defaulter

resides or in which any property movable or immovable owned by the defaulter is situate, containing particulars of such amount and the name or names of the person or persons by whom the amount is payable, and the Court shall thereupon direct a writ of execution to issue to the Fiscal authorizing and requiring him to seize and sell all or any of the property movable or immovable of the defaulter, or such part thereof as he may deem necessary for recovery of the amount, and the provisions of sections 226 to 297 of the Civil Procedure Code shall, *mutatis mutandis*, apply to such seizure and sale.

(3) Whenever the Commissioner issues a certificate under this section, he shall forthwith issue to the defaulter, whether resident or non-resident, a notification thereof by personal service, registered letter sent through the post, or telegraph; but the non-receipt of such notification by the defaulter shall not invalidate proceedings under this section.

Proceedings
for recovery
before a
Magistrate.

58H. (1) Where the Commissioner is of the opinion in any case that recovery of the amount in default by seizure and sale is impracticable or inexpedient, or where the full amount in default has not been recovered by seizure and sale, he may issue a certificate containing particulars of such amount and the name and last known place of business or residence of the defaulter to a Magistrate having jurisdiction in the division in which such place is situate. The Magistrate shall thereupon summon such defaulter before him to show cause why further proceedings for the recovery of the amount should not be taken against him, and in default of sufficient cause being shown, the amount in default shall be deemed to be a fine imposed by a sentence of the Magistrate on such defaulter for an offence punishable with a fine only or not punishable with imprisonment, and the provisions of sub-section (1) of section 312 (except paragraphs (a), (c) and (h)

thereof) of the Criminal Procedure Code relating to default of payment of a fine imposed for such offence shall thereupon apply, and the Magistrate may make any direction which, by the provisions of that sub-section, he could have made at the time of imposing such sentence.

(2) The correctness of any statement in a certificate issued by the Commissioner for the purposes of sub-section (1) shall not be called in question or examined by the Magistrate in any proceeding under this section and accordingly nothing in that sub-section shall authorize a Magistrate to consider, or decide, the correctness of any statement in such certificate or to postpone or defer such proceeding by reason of the fact that an appeal is pending against the amount in default.

(3) Nothing in sub-sections (2) to (5) of section 312 of the Criminal Procedure Code shall apply in any case referred to in sub-section (1) of this section.

(4) In any case referred to in sub-section (1) in which the defaulter is sentenced to imprisonment in default of payment of the fine deemed by that sub-section to have been imposed on him, the Magistrate may allow time for the payment of the amount of the said fine or direct payment of that amount to be made by instalments.

(5) The court may require bail to be given as a condition precedent to allowing time under sub-section (1) for showing cause as therein provided or under sub-section (4) for the payment of the fine; and the provisions of Chapter XXXVI of the Criminal Procedure Code shall apply where the defaulter is so required to give bail.

(6) Where payment in instalments is directed under sub-section (4) and default is made in the payment of any one instalment the same proceedings may be taken as if default has been made in payment of all the instalments then remaining unpaid..

(7) In any proceedings under sub-section (1), the certificate of the Commissioner shall be sufficient evidence that the amount has been duly required to be paid and is in default, and any plea that the amount is excessive, incorrect, or under appeal shall not be entertained:

Provided that where any person proceeded against has not appealed within the proper time against the amount and alleges that the amount is in excess of the sum which would have been charged if he had so appealed, the court may adjourn the matter for a period not exceeding thirty days to enable such person to submit to the Commissioner his objection to the amount.

(8) The Commissioner shall, notwithstanding the provisions of section 58D, consider any objection made under sub-section (7) and give his decision thereon, which shall be final, and shall be certified by him to the Magistrate, and proceedings under this section shall thereupon be resumed to enforce payment of the amount as reduced or confirmed under such decision. Where no objection has been made to the Commissioner within the period for which the matter was adjourned under that sub-section, the Commissioner shall issue a certificate to that effect and proceedings under this section shall be resumed to enforce payment of the amount.

Recovery of
amount by
vesting
immovable
property of
defaulter
in the Crown.

58J. (1) Where any amount is in default and the Commissioner is of opinion that the recovery of such amount or any part thereof by the means provided in section 58G or section 58H is impracticable or inexpedient, he may make an application by petition in writing to the District Court having jurisdiction in the district where the defaulter resides or in which any immovable property belonging to the defaulter and specified in such petition is situate for an order of that Court that such property shall vest in the Crown.

Every such petition shall specify—

- (a) the particulars of the amount in default;
- (b) the name or names and the address or addresses of the person or persons by whom the amount is payable; and
- (c) the particulars of the immovable property to be vested in the Crown.

There shall be attached to every such petition a certificate under the hand of the Commissioner that the amount specified in the petition is due from the defaulter.

(2) Whenever the Commissioner makes an application to a District Court under this section, he shall forthwith issue to the defaulter, whether resident or non-resident, a notification thereof by personal service, registered letter sent through the post or telegraph; but the non-receipt of any such notification by the defaulter shall not invalidate proceedings under this section.

(3) Within ten days after the date on which an application is made to a District Court by the Commissioner under sub-section (1), the Commissioner shall cause to be published in the *Gazette* a notice setting out the petition made in respect of such application.

(4) No person shall, on or after the date on which a notification was issued to the defaulter under sub-section (2) of an application made by a petition in writing to a District Court for the vesting of any immovable property, alienate to any other person—

- (a) any property which is specified in that petition; or
- (b) any rights in respect of that property,

and any alienation of that property or those rights to any other person shall be null and void:

Provided that the preceding provisions of this sub-section shall not be deemed to apply to any property or portions of any property which is or are not vested under this section in the Crown by an order of the District Court.

In this sub-section, "alienate", when used with reference to any immovable property or rights in respect of that property, includes an alienation, or a lease, hypothecation, transfer or disposal in any manner whatsoever of such property or such rights, and "alienation" shall be construed accordingly.

(5) Any person who wishes to prefer a claim to any immovable property in respect of which a notice under sub-section (3) has been published in the *Gazette* may, not later than fourteen days after the date of publication of such notice, apply by petition in writing to the District Court to which the application was made by the Commissioner under sub-section (1), to have such property declared as not liable to vesting in the Crown. Every such petition shall set out the right, title or interest of the petitioner to or in such property.

(6) The District Court to which the application was made by the Commissioner under sub-section (1) shall, after the expiry of the period of fourteen days referred to in sub-section (5), proceed in a summary manner to investigate and determine such claims as have been made in respect of the immovable property proposed to be vested in the Crown by such application. At the end of the investigation of a claim—

(a) if the District Court is satisfied that the claimant is entitled to the ownership of the immovable

property or any portion thereof, the Court shall make order accordingly, and

(b) if the Court is satisfied that the claimant has not established his claim to that property or that he has established his claim only to a portion thereof, the Court shall make order vesting in the Crown that property or that portion thereof in respect of which the claimant has not established ownership, and the Court shall make such order as to costs as the Court shall deem just.

(7) If at the expiry of fourteen days referred to in sub-section (5), no claim has been made by any person under that sub-section, the Court shall make order that the immovable property specified in the application made by the Commissioner under sub-section (1) shall vest in the Crown.

(8) Where any immovable property is vested in the Crown under this section by an order of the District Court, such property shall vest in the Crown subject to such encumbrances and charges as were existing on the date on which the application was made by the Commissioner.

(9) Nothing in the preceding provisions of this section shall be deemed to empower the District Court to which an application is made by the Commissioner under sub-section (1) to call in question or examine in any investigation under this section the correctness of any statement relating to particulars of the amount in default in such application or in the certificate referred to in that sub-section or to postpone or defer such investigation by reason only of the fact that an appeal is pending against the amount in default.

(10) An order under this section vesting in the Crown any immovable property of a defaulter may, upon an application made by the Commissioner, be revoked by the District Court by which such order was made.

(11) No application for the revocation of an order vesting in the Crown any immovable property of a defaulter shall be made to the District Court by the Commissioner except in any of the following cases:—

(a) Where the amount in default is annulled upon the final determination of an appeal made under Chapter IVA of this Ordinance against such amount.

(b) Where the amount which the defaulter is liable to pay after the final determination of any appeal made under Chapter IVA of this Ordinance is paid by him within forty days after such final determination or within six months after the date of the order vesting such immovable property in the Crown, whichever is the later.

(c) Where the amount in default is paid, when no appeal under Chapter IVA of this Ordinance is made by him against the amount, by the defaulter within six months after the date on which the order vesting in the Crown such immovable property was made.

(12) Where an order under this section vesting in the Crown any immovable property of any person is revoked under sub-section (10), such person shall not be entitled to claim any compensation for any loss or damage which he may have suffered as a result of, or in consequence of, the order vesting such immovable property in the Crown

having been made; and no action against the Crown for compensation for any loss or damage shall be entertained by any Court.

(13) At any time after any immovable property is vested in the Crown under the provisions of this section, such time being not less than six months after the date of vesting, the Commissioner shall cause the market value of such property to be determined by the Chief Valuer of the Government or by a Valuer of the Valuation Department who is authorized in that behalf by the Chief Valuer of the Government.

(14) Where the market value of any immovable property vested in the Crown by an order of the District Court under this section is more than the amount which the defaulter has to pay, the Commissioner, in his discretion, may—

- (i) with the approval of the Secretary to the Treasury, refund to the defaulter the amount by which the market value of that property exceeds the amount in default; or
- (ii) cause such property to be sold.

(15) Every sale under this section of any immovable property shall be—

- (a) on a date not earlier than six months after the date of the order vesting such property in the Crown;
- (b) by public auction;
- (c) after notice of such sale is given at least fourteen days before the date fixed for such sale by advertisement published in the *Gazette* and in one or more newspapers.

(16) The sum realized by the sale of any immovable property under this section shall be applied in the following order:—

- (i) in satisfaction of the amount payable to any person who has a mortgage or charge on any immovable property and whose claim to such mortgage or charge has been proved to the satisfaction of the Commissioner,
- (ii) in payment of the costs and charges of maintaining and selling the immovable property, and
- (iii) in satisfaction of the amount in default,

and any balance shall be paid to the defaulter.

(17) (a) Where an order is made by the District Court vesting any immovable property in the Crown, the Court may in such order or in any subsequent order direct that any person authorized in that behalf by the Commissioner shall take possession of such property for and on behalf of the Crown.

(b) Where the person directed under this sub-section to take possession of any immovable property is unable or apprehends that he will be unable to take possession of that property, because of any obstruction or resistance which has been or is likely to be offered, such person shall, on his making an application in that behalf to the District Court which directed him to take possession of such property, be entitled to an order of that

Court directing the Fiscal to deliver possession of the property to him for and on behalf of the Crown.

(c) Where an order made under paragraph (b) of this sub-section is issued to the Fiscal by the District Court, he shall forthwith execute that order and shall in writing report to that Court the manner in which that order was executed.

(d) For the purpose of executing an order under paragraph (b) of this sub-section, the Fiscal or any person acting under his direction may use such force as may be necessary to enter the property to which that order relates and to eject any person in occupation of that property and to deliver possession of that property to the person who is authorized to take possession of that property for and on behalf of the Crown.

(18) Where an order under this section vesting in the Crown any immovable property of any person is revoked under sub-section (10), the Crown shall be liable to account to such person for the income derived from such property during the period for which such property was vested in the Crown and to pay such income to such person less the expenses incurred in maintaining such property during that period.

(19) Where any immovable property is sold under this section, the Commissioner shall in the name and on behalf of Her Majesty be entitled to execute the instrument of transfer of such property to the purchaser.

(20) Any person who is aggrieved by an order of the District Court under sub-section (6) may appeal therefrom to the Supreme Court, and the provisions of the Civil Procedure Code relating to appeals from the District Court to the Supreme Court shall apply in relation to such appeal.

(21) In this section—

“ immovable property ” means any land (other than land subject to a *fidei-commissum*, life interest or trust) and includes things attached to the earth or permanently fastened to anything attached to the earth; and

“ market value ”, in relation to any immovable property, means the value which such property will fetch in the open market.

Recovery of
amount out
of debts, &c.

58K. (1) Where the amount of stamp duty or penalty payable by any person is in default and it appears to the Commissioner to be probable that any person—

(a) owes or is about to pay money to the defaulter or his agent; or

(b) holds money for and on account of the defaulter or his agent; or

(c) holds money on account of some other person for payment to the defaulter or his agent; or

(d) has authority from some other person to pay money to the defaulter or his agent,

the Commissioner may give to such person notice in writing (a copy of which shall be sent by post to the defaulter) requiring him to pay any such moneys not exceeding the amount in default to the officer named in such notice. The notice shall apply to all such moneys which are in his hands or due from him or about to be paid by him at the date of receipt of such notice, or come into his hands or become due from him or are about to be paid by him at any time within the period of three months after the date of such notice.

(2) Any person who has made any payment in pursuance of this section shall be deemed to have acted under the authority of the person by whom the amount was payable and of all other persons concerned, and is hereby indemnified in respect of such payment against all proceedings, civil or criminal, notwithstanding the provisions of any written law, contract, or agreement.

(3) Any person to whom a notice has been given under sub-section (1) who is unable to comply therewith owing to the fact that the moneys in question do not come into his hands or become due from him within the period referred to in sub-section (1) shall within fourteen days of the expiration thereof give notice in writing to the Commissioner acquainting him with the facts.

(4) Where any person to whom a notice has been given under sub-section (1) is unable to comply therewith and has failed to give notice to the Commissioner as provided in sub-section (3), or where such person has deducted or could have deducted the amount to which the notice relates or any part thereof and has not paid over as directed by the Commissioner such amount or part thereof within fourteen days after the expiration of the period referred to in sub-section (1), such person shall, if he is an individual be liable, or where such person is a company or a body of persons, whether corporate or unincorporate, the secretary, manager or other principal officer of such company or body shall be personally liable, for the whole of the amount which such person has been required to deduct, and such amount shall be recovered from such individual, secretary, manager or other principal officer by all means provided in this Ordinance.

(5) For the purposes of this section, the expression "defaulter" shall be deemed to include the agent of a person who is in default and the provisions of this section shall apply in any case where the amount which would have been payable by any person if he were alive is in default; and for the purposes of the application of those provisions in any such case, the expression "defaulter" in sub-section (1) means—

- (a) the executor or administrator of a deceased person, or
- (b) any person who takes possession of, or intermeddles with, the property of a deceased person, or
- (c) any person who has applied or is entitled to apply to a District Court for the grant or resealing of probate or letters of administration in respect of the estate of a deceased person.

Recovery of
amount from
persons leaving
Ceylon.

58L. (1) Where the Commissioner is of opinion that any person is about to or likely to leave Ceylon without paying the amount of stamp duty or penalty required to be paid, he may issue a certificate containing particulars of such amount and the name of such person to a Magistrate, who shall, on receipt thereof, issue a direction to the Inspector-General of Police to take such measures as may be necessary to prevent such person from leaving Ceylon without paying the amount or furnishing security to the satisfaction of the Commissioner for payment thereof.

(2) At the time of issue of his certificate to the Magistrate, the Commissioner shall issue to such person a notification thereof by personal service, registered letter sent through the post, or telegraph; but the non-receipt of any such notification by such person shall not invalidate proceedings under this section.

(3) Production of a certificate signed by the Commissioner or an officer authorized in that behalf by such Commissioner, stating that the amount has been paid or that security has been furnished or that the amount has been paid to a police officer in charge of a police station, shall be sufficient authority for allowing such person to leave Ceylon.

Use of more than one means of recovery.

58M. Where the Commissioner is of opinion that application of any of the provisions of this Chapter has failed or is likely to fail to secure the payment of the whole of any amount due under this Ordinance from any person, it shall be lawful for him to proceed to recover any sum remaining unpaid by any other means of recovery provided in this Chapter, notwithstanding that an order has been made by a Magistrate under section 58H and carried into effect.

Power of Commissioner to obtain information for the recovery of the amount.

58N. The Commissioner may, by notice given in writing to any person, require that person within the time specified in such notice to furnish any information which the Commissioner may require for the purpose of recovering any amount due from such person or some other person.

Liability of directors of private company in liquidation.

58P. (1) Notwithstanding anything in the Companies Ordinance, where any private company is wound up and where any amount which that company is liable to pay, whether such liability arose before, or in the course of, or after, its liquidation, cannot be recovered, then, every person who was a director of the company at any time during the period in which such amount became liable to be paid shall be jointly and severally liable for the payment of such amount unless he proves that the default

in payment of the amount cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

(2) In this section, the expression "private company" shall have the same meaning as in the Companies Ordinance.

Amendment of section 69 of the principal enactment.

11. Section 69 of the principal enactment is hereby amended by the substitution, for the words "thousand rupees", of the words "thousand rupees or with imprisonment of either description for a term not exceeding six months, or with both such fine and imprisonment".

Amendment of section 70 of the principal enactment.

12. Section 70 of the principal enactment is hereby amended as follows:—

(1) by the substitution for paragraph (a) of that section, of the following paragraph :—

"(a) in contravention of the provisions of section 34, fails or neglects to give a receipt; or"; and

(2) in the marginal note to that section by the substitution, for the words "for refusal to give", of the words "for failure to give".

Amendment of section 75 of the principal enactment.

13. Section 75 of the principal enactment is hereby amended by the substitution in sub-section (2) of that section, for the expression "in the manner provided by section 54.", of the expression "in the manner provided in Chapter IVB".

Insertion of new section 75A in the principal enactment.

14. The following new section is hereby inserted immediately after section 75, and shall have effect as section 75A, of the principal enactment:—

"Amount of stamp duty or penalty to be payable notwithstanding any proceedings for penalties, &c.

75A. The institution of proceedings for, or the imposition of, a penalty, fine or term of imprisonment under this Ordinance shall not relieve any person from liability to payment of any amount for which he is or may be liable."

15. The following new sections are hereby inserted immediately after section 93, and shall have effect as sections 93A and 93B respectively, of the principal enactment:—

Insertion of new sections 93A and 93B, in the principal enactment.

“ Signature and service of notices.

93A. (1) Every notice to be given by the Commissioner or an Assessor under this Ordinance shall bear the name of the Commissioner or Assessor, as the case may be, and every such notice shall be valid if the name of the Commissioner or Assessor is duly printed or signed thereon.

(2) Every notice given by virtue of this Ordinance may be served on a person either personally or by being delivered at, or sent by post to, his last known place of abode or any place at which he is or was carrying on business.

(3) Any notice sent by post shall be deemed to have been served on the day succeeding the day on which it would have been received in the ordinary course by post.

(4) In proving service by post, it shall be sufficient to prove that the letter containing the notice was duly addressed and posted.

(5) Every name printed or signed on any notice or signed on any certificate given or issued for the purposes of this Ordinance, which purports to be the name of the person authorized to give or issue the same, shall be judicially noticed.

Validity of notices, &c.

93B. (1) No notice, certificate or other proceeding purporting to be in accordance with the provisions of this Ordinance shall be quashed, or deemed to be void, or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Ordinance, and if the person to whom such notice or certificate is given or intended to be given or affected thereby is designated therein according to common intent and understanding.

(2) Without prejudice to the generality of sub-section (1), a notice shall not be impeached or affected by reason of a mistake therein as to the name or surname of the person chargeable with the amount, if the notice is duly served on the person intended to be charged."

16. Section 94 of the principal enactment is hereby amended by the insertion, immediately before the definition of "bank", of the following new definitions:—

Amendment of
section 94
of the principal
enactment.

" "Assessor" means an Assessor of Inland Revenue appointed for the purposes of the Inland Revenue Act, No. 4 of 1963, and includes a Senior Assessor of Inland Revenue and an Assistant Assessor of Inland Revenue;

"authorized representative" means any individual—

(1) who is authorized in writing by a person to act on his behalf for the purposes of this Ordinance and who is—

(a) in any case—

(i) a member of the Institute of Chartered Accountants of Ceylon;

(ii) an accountant approved by the Commissioner;

(iii) an advocate or a proctor;
or

(iv) an employee regularly employed by the person concerned;

(b) in the case of an individual, a relative;

(c) in the case of a company, a director or the secretary;

(d) in the case of a partnership, a partner;

(e) in the case of a body of persons, a member of such body; or

(2) who is authorized in writing from time to time, by a person to act on his behalf for the purposes of this Ordinance, and who, being an individual

registered as an auditor under the Companies' (Auditors) Regulations, is approved by the Commissioner; '.

17. (1) Part I of Schedule A to the principal enactment is hereby amended as follows:—

Amendment of
Part I of
Schedule A to
the principal
enactment.

(a) in item 14 thereof—

(i) by the substitution, for the figures " 0.6 " occurring under the heading " Duty ", of the figures " 0.15 "; and

(ii) by the substitution, for the figures " 0.10 ", " 0.15 ", " 0.25 ", " 0.50 " and " 0.50 " occurring under the heading " Duty " in relation to the sub-items " Over Rs. 0 and not over Rs. 100 ", " Over Rs. 100 and not over Rs. 250 ", " Over Rs. 250 and not over Rs. 500 ", " Over Rs. 500 and not over Rs. 1000 " and " Every further Rs. 1000 or part thereof ", of the figures " 0.20 ", " 0.30 ", " 0.50 ", " 1.0 " and " 1.0 ", respectively; and

(b) in item 16 thereof, by the substitution, in the paragraph inserted by Act No. 49 of 1968 immediately after the proviso to paragraph (7) of that item, for the words " Writing or bond either in respect of, or creating a pledge of, corporeal movables ", of the words " Writing or bond either in respect of a pledge of corporeal movables or creating a pledge of corporeal movables ".

(2) The amendment made to the principal enactment by paragraph (b) of sub-section (1) shall be deemed to have come into effect on April 1, 1957.