

RATWATTA v. BUYZER.

1899.

August 27.
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C. R., Kandy, 1,041.

Court of Requests—Jurisdiction to entertain cross claim in excess of Rs. 300—Issue as to difference between amount of claim and of cross claim—Courts Ordinance, 1889, s. 81—Rule guiding Judge in appeal in referring case to Collective Court.

In an action for recovery of Rs. 160 defendant admitted the amount, but pleaded that plaintiff owed him Rs. 366 on another account, and that he was entitled to judgment against the plaintiff for the difference. After judgment delivered in favour of defendant, but before signing of decree, plaintiff took the objection that defendant's cross claim was beyond the jurisdiction of the court—

Held, that such objection was not too late to be taken, and that it was competent to the Court to grant such relief to the defendant as was proper to its jurisdiction.

Per BROWNE, A.J.—As a general rule, a Judge sitting in appeal should properly refer a case to the Collective Court when there are conflicting decisions on any question of law or procedure.

PLAINTIFF sued defendant for the recovery of Rs. 160, being rent due to him. The defendant, while admitting his indebtedness to the plaintiff in this sum, claimed from him Rs. 366·25 for work done by him as surveyor. Defendant prayed for judgment for the balance, Rs. 206·25. No plea in reconvention was filed. On the trial day, plaintiff and defendant agreed that the

1899. only issue to be tried was whether the plaintiff was indebted to
 August 27. the defendant in Rs. 366·25 or any part thereof for work done.
 After evidence heard the Commissioner found that the plaintiff
 was indebted to the defendant in Rs. 342·25. Deducting the
 amount of plaintiff's claim of Rs. 160 from this, the Commis-
 sioner pronounced judgment that the defendant do recover from
 the plaintiff Rs. 182·25.

After judgment was delivered, but before the decree was signed,
 plaintiff's counsel appeared before the Commissioner, after
 notice to the defendant, and took the objection that the claim
 in reconvention was beyond the jurisdiction of the Court of
 Requests.

The Commissioner overruled the objection and signed the decree,
 holding as follows :—

“ The inquiry as to the amount of the plaintiff's debt to the
 defendant was incidental to the claim in reconvention, which
 involved a sum within the pecuniary limits of the jurisdiction of
 this Court. In answer to the plaintiff's claim, the defendant said,
 ‘ I admit I owe you Rs. 160, ’ and claimed the difference Rs. 340.
 It would exceed the pecuniary limits of the jurisdiction of this
 Court, and could not be entertained, but if the defendant waived
 Rs. 40 and restricted his claim to Rs. 300 it would be within my
 jurisdiction. The amount claimed to be set off should not exceed
 the jurisdiction of this Court. The excess of that amount over
 the plaintiff's claim, for which the defendant asks for a decree
 in his favour, if it does not exceed Rs. 300, is not material for the
 purposes of jurisdiction. That, I think, is the meaning of section
 81 of The Courts Ordinance, 1889, which enacts : ‘ Where in any
 ‘ proceeding before any Court of Requests any defence or claim
 ‘ in reconvention of the defendant involves matter beyond the
 ‘ jurisdiction of the Court, such defence or claim in reconvention
 ‘ shall not affect the competence or duty of the Court to dispose
 ‘ of the matter in controversy so far as relates to the demand of
 ‘ the plaintiff and the defence thereto, but no relief exceeding
 ‘ that which the Court has jurisdiction to administer shall be
 ‘ given to the defendant upon any such claim in reconvention. ’ ”

The error Mr. Beven has made is to look upon the plaintiff's
 debt to the defendant as the amount of the claim in recon-
 vention.

I sustain my jurisdiction and sign the decree.

Plaintiff appealed.

Dornhorst, for appellant.

Eawa, for respondent.

The case was argued on the 8th August, 1899, before Mr. Acting Justice BROWNE, and counsel on both sides submitted that the question of jurisdiction should be reserved by his lordship for the Collective Court.

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Cur. adv. vult.

27th August, 1899. BROWNE, A.J.—

I consider that as a general rule the reference to the Collective Court should properly be made when there are conflicting decisions on any question of law or procedure, and that it should not be assumed such need will arise till they shall in fact occur. Moreover, I consider that though the provisions of section 73 of The Courts Ordinance have not been enacted in regard to Courts of Requests in chapter VII. thereof, the provisions of section 81 have very much the same effect when they make such a Court competent on a claim in reconvencion exceeding its jurisdiction being preferred before it, to dispose of the matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, limiting however the power to grant relief to that proper to its jurisdiction; and that under the circumstances here of non-prefering of it before judgment the objection should not be favoured in appeal. The exercise of the discretion given thereby to this Court to direct the transfer of an action to a higher Court, it would appear to me, might possibly depend on whether the defendant's claim were for one matter (as say a bond or promissory note the execution or making of which was denied) or, as here, for several units, for some of which the relief given would be as matter of defence inconvenient and for the other as counterclaim. It would not always therefore be imperative that reconvencion for over Rs. 300 would be matter beyond the jurisdiction of the Court.

I therefore take it upon myself not to accede to the request of counsel, as I do not see it is absolutely necessary I should do so.

Let the appeal on facts be set down for further hearing before me the week after next.

