

PERUMAL v. TERUNNANSE.

*D. C., Colombo, 6,667.*

1895.

*September 24.*

*Reduction of amount of claim—Fall of suit from a higher class to a lower class of stamp duty—Right of party to use stamps appropriate to the lower class.*

Where a plaintiff, by reducing his claim by amendment of plaint, reduces the class of the case, the stamp duty payable on proceedings after such amendment is as on an action in the lower class.

**T**HE facts material to this case appear in the judgment of the Supreme Court.

*Dornhorst*, for appellant.

*Bawa*, for respondent.

24th September, 1895. BONSER, C.J.—

This is an appeal by the plaintiff against an order of Mr. Templer, Acting District Judge of Colombo, rejecting his amended plaint. The case illustrates the procedure of the District Court of Colombo.

The action was by the assignee of a lease against the lessee, claiming Rs. 200 as rent, and also damages Rs. 1,000 for breach of

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certain covenants in the lease as to the management of the land. The case therefore was one for Rs. 1,000 damages and Rs. 200 for rent due ; but in order to bring the case within class IV. of the Stamp Ordinance, the plaintiff waived Rs. 200 of his claim, making his claim Rs. 1,000, which is the maximum amount of class IV.

On the 26th of March the case came on for trial, and the plaintiff then wished to amend his plaint by abandoning his claim for damages, and making his claim to one for rent only, and he also wished to make some merely verbal alterations to correct some mistakes which were pointed out by the defendant's counsel. Why these amendments were not made then and there, and why the only issue left as to the rent was not tried and determined at once, I cannot conceive.

But that course was not adopted. The Acting District Judge allowed the plaintiff time to amend his plaint, but ordered him to pay all costs consequent on the amendment, while the costs of the day were ordered to abide the final result of the action.

Then, instead of a day being fixed for the trial, the case was ordered to be taken off the roll. That was an order which ought not to have been made. Then, on the 30th of April, a motion was made on behalf of the plaintiff to allow the amendment which had already been allowed.

That motion the Acting District Judge dealt with thus : he ordered the matter to be listed for argument as to the sufficiency of the plaint as amended, on the ground that the plaint had undergone a complete transformation by being restricted to a claim for rent only. Why it should have been listed for argument I cannot understand. Then, when it came on for argument before Mr. Templer as to the sufficiency of the amendment, he did not hold it insufficient, but he rejected it altogether, on the ground that the original plaint was one for Rs. 1,000, whilst the new plaint was one for Rs. 200 only, and he appears to have assented to the argument of Mr. Bawa, that the defendant would be seriously embarrassed by having a lesser liability to answer. He seems to have also thought that the defendant would have to pay for stamps on all his processes as in an action for Rs. 1,000, and would not be allowed to use stamps as in an action for Rs. 200. In this I think he was completely wrong. I asked counsel whether there was any provision in the Stamp Ordinance which makes it necessary for parties sued for the recovery of Rs. 200 to use stamps as in an action for Rs. 1,000, and, as I expected, no such provision was forthcoming. We were told that this was the practice of the District Court. If so, the practice is clearly wrong, and the sooner it is altered the better.

The case should now be tried on the only issue left, that is, <sup>1895.</sup> the question of defendant's liability to pay this sum of Rs. 200 <sup>WITHERS J.</sup> for rent. I cannot make the District Judge pay the costs of all these useless proceedings. But no costs will be allowed of any of the proceedings subsequent to the 26th of March, 1895, the day when the amendment was allowed either between party and party, or between proctor and client, except the costs of this appeal, which the respondents will pay.

WITHERS, J.—

I quite concur. The simple issue to be tried is, whether the defendant is liable to pay a sum of Rs. 200 by way of rent under a contract of lease which has been assigned to the plaintiff. The plaintiff originally sued not only for rent, but also for damages in breach of one or more covenants in the lease. An answer was put in and the case was fixed for trial. On the day of trial the defendant's counsel took exception to certain passages in the plaint. The pleader, on having the weak places pointed out to him, asked the Court for leave to amend, which was granted.

The amendment proposed was to introduce some apt words which had been omitted from the part of his claim, which the plaintiff desired to maintain, and to strike out his cause of action and prayer for damages. Why this could not have been done then and there and the trial of the simple issue proceeded with I am at a loss to imagine. However, it was not done, and Mr. Templer, who took up the case as judge, would not allow it to be done for reasons which I am unable to appreciate. Why a party who, having instituted an action in a higher class, reduces it legitimately to a lower class before the trial takes place, should be obliged to continue to pay the duty of the original class, I fail to understand.

No costs will be allowed except costs of the appeal.

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