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CADAR SAIBU *v.* SAYADU BEEBI.

D. C., Kandy, 12,559.

Appeal to Privy Council—Value of matter at issue—Ordinance No. 1 of 1889, s. 42 (2)—Three actions rei vindicatio *in respect of adjoining tenements, each of less value than Rs. 5,000—Agreement between parties that decision in one case should govern the two other cases—Aggregate value—Affidavit sworn before a Justice of the Peace, who was a proctor in the suit—Inadmissibility of such affidavit.*

Although the value of the matter at issue in a case, sought to be brought in review before the Supreme Court collectively preparatory to an appeal to Her Majesty in Her Privy Council, may be under Rs. 5,000, yet it is permissible for a party aggrieved to show, under section 42 (2) of the Ordinance No. 1 of 1889, that the matter involves indirectly the title to property exceeding the value of Rs. 5,000.

The fact that the matter in which the application for leave to appeal was sought was one of three actions depending between the parties or their privies in estate for the recovery of a tenement in each case which, though separately assessed by the Local Board, formed nevertheless one property; the fact that it was agreed between the parties that the decision, as regards title in the present case, should govern the two other cases; and the valuation set upon each of the tenements in order to show the aggregate value of the entire property may serve as evidence that the title involved indirectly exceeds Rs. 5,000.

Affidavits sworn before a Justice of the Peace, who is also a proctor in the case, are not admissible for the purposes of that case.

THIS was an application by the defendants in an action in the District Court of Kandy for leave to appeal to the Privy Council against a decree of the Supreme Court, which reversed a decree of the District Court of Kandy and gave judgment for the plaintiff.

The action was one to vindicate a small piece of ground with temporary buildings on it, situate in the town of Nawalapitiya, forming the back premises of two tenements separately assessed by the Local Board, but let as a separate building. In the plaint the latter tenement at the back of the other two was valued at a sum of Rs. 350, and in addition a sum of Rs. 140 was claimed as damages. The plaintiff at the same time brought two other actions in respect of the two front tenements. These actions were brought against the tenants of the defendants in the present case to recover the premises. It was agreed that the present action should be first decided, and that the result of the present action should govern the two other cases.

Bawa, for defendants.—Although the value of the property at stake in the present action was below the appealable limit, yet if the value of the property comprised in the other two cases were

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added to the value of this property, the sum total would amount to more than Rs. 5,000, and therefore the title to property worth more than Rs. 5,000 was, in terms of Ordinance No. 1 of 1889, section 42 (2), " indirectly at issue " in the present case. He argued on the facts also.

Wendt, Acting A.-G., contra.—Though the total value of the three tenements in the property would, according to the basis of valuation of the defendant, amount to more than Rs. 5,000, yet that basis of valuation cannot be admitted as correct. According to a more reliable calculation, the value is proved to be much less than Rs. 5,000. [BONSER, C.J.—The affidavits filed on behalf of your client appear to have been sworn before a Commissioner, who was the proctor for plaintiffs. Such affidavits are inadmissible according to English practice. Are you prepared to have them re-sworn before another Justice of the Peace?—Yes.]

BONSER, C.J., after reviewing the facts of the case and considering in detail the basis of the calculation made by the defendants and the plaintiff, held as follows:—

It seems to me that the plaintiff's valuation of the property is more trustworthy than that of the defendants, and in my opinion it is not proved that the decree appealed from has been pronounced in respect of a matter at issue above the value of Rs. 5,000, or involves directly or indirectly title to property exceeding the value of Rs. 5,000.

There is one thing I should mention with respect to the affidavits which have been filed on behalf of the plaintiff. They were sworn before a person who is a proctor in the suit, and according to English practice are inadmissible. In my opinion that practice is a practice which should be followed here. The Acting Attorney-General undertook to have the affidavits re-sworn before another Commissioner, and as Mr. Bawa raises no objection to that course being taken I have received the affidavits on that condition. The plaintiff will have his costs of the present application.