

1902.  
July 2.

VEERAVAKU v. SUPPRAMANIAN.

C. R., Colombo, 20,085.

*Action in ejectment—Claim in reconvention in excess of jurisdiction of Court of Requests—Motion for transfer of case to District Court—Courts Ordinance, s. 81—Civil Procedure Code, ss. 75 (e), 195, and 819—Discretion of Supreme Court.*

Where the plaintiff raised in the Court of Requests an action in ejectment, and the defendant claimed the right to remain in possession of the leased premises until the sum of Rs. 2,584 advanced by him to the plaintiff was liquidated by the accrual of rent; and where the defendant moved the Supreme Court, under section 81 of the Courts Ordinance, that the case be transferred from the Court of Requests of Colombo to the District Court of Colombo, on the ground that the claim in reconvention was in excess of the jurisdiction of the Court of Requests,—

*Held*, that the Supreme Court had a discretion as to the transference of a case on account of want of jurisdiction, and that as the plaintiff's claim for possession was urgent, and an order of transfer to the District Court would involve delay in the trial of the case there, there was no justification for allowing the defendant's motion.

ON the 17th June, 1902, *Walter Pereira*, on behalf of the defendant, moved the Supreme Court that the above action be transferred, under the provisions of section 81 of the Courts Ordinance, from the Court of Requests of Colombo to the District Court of Colombo. The facts of the case appear in the following judgment.

*H. Jayawardene* was heard for the plaintiff, respondent.

*Cur. adv. vult.*

2nd July, 1902. MONCREIFF, A.C.J.—

The plaintiff sued the defendant in ejectment. He also claimed damages because the defendant had remained in occupation after due notice to quit. The defendant pleaded that he had, in goods and in other ways, advanced money to the plaintiff to the amount of Rs. 2,584, and he claimed the right to remain in possession of the leased premises until that amount was liquidated by the accrual of rent. He also claimed in reconvention that the sum due to him should be paid to him by the plaintiff in settling the merits of the action.

The defendant applied, under section 81 of the Courts Ordinance, that the action might be transferred to the District Court, on the ground that the amount at issue under reconvention was in excess of the jurisdiction of the Court of Requests. On the other hand, it was urged that in this case, the action being for ejectment and

not for rent (there being no rent due), the defendant could not claim in reconvention, because his claim had no relation to the claim of the plaintiff, and could not be adjusted with reference to it. Some colour is given to this contention by sections 195 and 819 of the Civil Procedure Code, which look as if the intention of the Legislature was that a claim in reconvention should be a claim which could be adjusted with the plaintiff's claim. It is, however, declared in section 75 (e) of the Civil Procedure Code to be a cross-action, that is, a separate action independent of the plaintiff's action; and in the Code I find nothing to indicate that it is to be in any way related to the plaintiff's claim. It is perhaps unfortunate that there does not appear to be any provision giving this Court a discretion with regard to the admission of a claim in reconvention.

It would appear from a passage in Voet's *Commentaries on the Pandects* (5, l. 86) that there are some applications to which a claim in reconvention cannot be put forward by the defendant. He is of opinion that there are probably cases in which something is required which is not properly the subject of an action, where, as he puts it, *imploratio non est actionis loco*, where the petition is not in the nature of an action; and he adds precision to this opinion by saying *cum reconventio precedentem requirat conventionem, conventio autem judicialis non sit, ubi nihil ab adversario petitum est, nullave actio instituta, i.e.*, where there is no convention there can be no reconvention. It cannot be said there is no convention in this case; the plaintiff's proceeding is an action founded upon contractual relations, and the defendant is within his right in bringing forward his claim in reconvention. At the same time this Court has a discretion under section 81 of the Courts Ordinance as to the transference of cases on account of want of jurisdiction, and following the principle, which I think is a correct principle, that inasmuch as in this case the plaintiff's claim is for possession, and therefore is urgent, and inasmuch as to order a transfer of the case to the District Court would put it at the bottom of the list in that court, the delay would be unfair to the plaintiff. I do not think I should be justified in ordering a transfer. The case will therefore proceed in so far as it can proceed in the Court of Requests.

1902.  
July 2.  
MONCREIFF  
A.C.J.