

Present: Mr. Justice Wood Renton.

CARO v. AROLIS.

C. R., Balapitiya, 5,668.

1907.

March 25.

Court of Requests—Jurisdiction—Rupees three hundred and further damages—Waiver of claim in excess of jurisdiction of Court of Requests—Power of Appeal Court—Civil Procedure Code, s. 34.

Where a plaintiff sued in the Court of Requests for Rs. 300 damages and further damages at the rate of Rs. 50 per day *pendente lite*.—

Held, that the Court of Requests had no jurisdiction to entertain the suit.

Maclachlan v. Maitland (1) and *Cassim v. Sanhait* (2) distinguished.

APPEAL by the defendant from a judgment of the Commissioner.

A. St. V. Jayewardene, for the defendant, appellant.

Zoysa, for the plaintiff, respondent.

25th March, 1907. WOOD RENTON J.—

The only question that I have to determine is whether the respondent's action is within the jurisdiction of the Court of Requests. He sues the appellant for having wrongfully closed a plumbago pit belonging to him, and claims by way of damages Rs. 300 " with

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further damages at the rate of Rs. 50 per day *pendente lite*." if the damages *pendente lite* are to be added to the substantive claim, the case is, of course, one that the Court of Requests has no jurisdiction to try. The learned Commissioner has taken the view that damages after action brought are not to be computed for the purpose of ascertaining whether a suit is within the jurisdiction of a Court of Requests. Under the circumstances of the present case I am unable to agree with him.

It was held by Dias J., then Acting Chief Justice, in *Maclachlan v. Maitland* (1), that a sum due by way of interest, accruing after the date of the plaint, was not included in the amount to be considered from the point of view of jurisdiction in the Court of Requests; and in *Cassim v. Sanhait* (2) I have myself held, with hesitation, that in an action for declaration of title to land the value of the land itself is the test of whether jurisdiction exists or not, and that the jurisdiction so conferred is not defeated merely because a plaintiff claims incidental and subsidiary relief, in connection with ouster, by way of damages. Neither of these cases, however, in my opinion, helps the present respondent. In *Maclachlan v. Maitland* the interest allowed was only compensation to the plaintiff for being kept out of the use of his money. It was an incident of the real subject-matter of the suit, out of which it grew. In *Cassim v. Sanhait* my decision (if it was right) rests on two grounds: (i.) that section 4 of Ordinance No. 12 of 1895—repealing in regard to this matter section 77 of "The Courts Ordinance, 1889"—makes actions for the recovery of land a heading distinct from actions of debt or damages, and seems to have intended that in the former case the value of the land itself should be the test of jurisdiction; and (ii.) that where that test has been complied with there is nothing in the section to prevent a plaintiff from obtaining ancillary damages on the ground of ouster. Such damages are in the nature of interest for the use of the land recovered. Like interest, they are connected with, and grow out of, the subject claimed.

Here, in any event, the circumstances are quite different. The respondent does not seek to recover his plumbago pit or complain of ouster from it. His action sounds in damages alone, and the additional damages claimed *pendente lite* are not in the nature of interest, nor are they referable to the principal demand; they are an independent head of claim. Does the fact that they are claimed after action brought, or that if the respondent had obtained judgment at the moment of filing his plaint the amount awarded to him would have been within the jurisdiction of the Court of Requests, make any difference? I do not think so. Section 4 of Ordinance No. 12 of 1895, in cases of this character, makes the amount

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demanded, and not the amount awarded, the test of jurisdiction. Here the respondent at the date of his plaint demanded damages in excess of the jurisdiction of the Court of Requests. I cannot think that it was competent for him to do so.

The question was argued before me whether the claim for additional damages could be abandoned on the hearing of the appeal, so as to obviate the plea to the jurisdiction. The appellants counsel expressed his readiness to take this course. But Mr. A. St. V. Jayewardene for the respondent naturally objected to its being permitted. In my opinion the suggested waiver comes too late. Section 34 of the Civil Procedure Code, which enables a plaintiff to relinquish a part of his claim in order to bring the action within the jurisdiction of any Court, cannot, I think, apply in the Appeal Court, except by consent, in favour of a litigant who has contested a plea to the jurisdiction in the Court below. The respondent in this case had the law well in view; for, after estimating his principal damages at Rs. 400 he restricted that part of his claim to Rs. 300, in order to satisfy, as he thought, the provisions of Ordinance No. 12 of 1895. On the question as to the additional damages, he stood firm; and he must now abide the event. The appeal is allowed with all costs here and in the Court of Requests.

Appeal allowed.

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 J.