contends for, as the difference in the two premiums may be due to the differences indicated by me between this policy and the policy referred to in G.

It has been laid down in *Price v. Thomas*[1] and *The Liver Alkali Co. v. Johnson*[2] that " there is no better established rule as regards stamp duty than that all that is required is, that the instrument should be stamped for its leading and principal object and that this stamp covers everything accessory to this object ". Following that principle I hold that the instrument in this case is not stampable as an instrument within the meaning of section 23 (*a*) of the Stamp Ordinance.

The appellants will be entitled to the costs of this appeal.

GUNASEKARA J.—I agree.

Appeal allowed.

1948 *Present :* **Dias and Nagalingam JJ.**

SEDIRIS, Appellant, *and* DINGIRIMENIKA *et al.*, Respondents

S. C. 436—D. C. Kegalla, 4,385

Prescription—Possession under jus retentionis*—Not adverse—Right to tender compensation for improvements—Not barred by limitation.*

Possession under a *jus retentionis* is not adverse possession and cannot found a title by prescription. Nor can the right to tender compensation for the improvements be barred by limitation.

APPEAL from a judgment of the District Judge, Kegalla.

N. E. Weerasooria, K.C., with *W. D. Gunasekera*, for plaintiffs appellants.

H. W. Jayewardene, for defendants respondents.

Cur. adv. vult.

November 12, 1948. DIAS J.—

By the final decree P1 dated July 5, 1926, in D. C., Kegalla, Partition Case No. 6,720, the land in dispute was allotted to K. M. Podimenika the first defendant to that action and to K. M. Tikirikumarihamy, the second defendant to that action. It was further ordered and decreed that these two persons should pay to R. D. Odirisa and K. Dingiriappu, who were the fifth and sixth defendants to that action, the sum of Rs. 156·25 in respect of certain plantations made by them.

[1] *(1831) Barnewell and Adolphus's Reports 218.*

[2] *(1872) 41 Law Journal 110.*

K. M. Podimenika has given evidence in this case. K. M. Tikirikumarihamy is the sixth defendant to the present action and R. D. Odirisa is the first defendant to this action. Dingiriappu is dead and is represented by the second to the fifth defendants.

K. M. Podimenika by deed P3, dated July 17, 1945, conveyed her title to an undivided half to the first and second plaintiffs. The case for the plaintiffs is that the first defendant, Dingiriappu, and his successors were in possession of the land in dispute under their *jus retentionis*, and were, therefore, not possessing adversely. The plaintiffs say that the compensation was tendered but not accepted, and that the first to the fifth defendants are in wrongful possession of the land. They, therefore, ask that they be ejected and for damages. At the trial the parties agreed that the damages were to be Rs. 50 up to date and continuing damages at Rs. 25 per annum.

The case for the first to fifth defendants is that Podimenika and the sixth defendant, Tikirikumarihamy, "surrendered and gave over their rights to the first defendant and Dingiriappu who thereupon became the absolute owners of the property", and that they entered into possession as absolute owners. They, therefore, claim title by prescription. In the alternative they plead that the right of the plaintiffs to tender compensation is now prescribed.

The plaintiffs have brought into Court the sum of Rs. 156·25.

The parties went to trial on the following issues :—

(1) Did Podimenika and Tikirikumarihamy, sixth defendant, surrender their lots 1, 1A and 1B allotted to them by the final decree in case No. 6,720 of this Court in favour of the first defendant and Dingiriappu in lieu of compensation ?

(2) Have defendants acquired a prescriptive title to the said lots ?

(3) Is plaintiff barred by prescription from offering compensation ordered in the said partition action to defendants ?

(4) Damages agreed on at Rs. 50 up to date and continuing damages at the rate of Rs. 25 per year thereafter.

Podimenika gave evidence for the plaintiff. The defendants called no evidence. The District Judge answered issues 1, 2 and 3 in the affirmative and issue 4 in the negative, and dismissed the plaintiff's action with costs.

In my opinion, the decree appealed against cannot stand. The case of *de Silva v. Sangananda Unanse* [1] has been misunderstood and misapplied by the District Judge. That case lays down a general principle, and is not confined to the interpretation of the terms of the decree entered in that particular case. The *ratio decidendi* is that when in the final decree in a partition action provision is made that one party should pay compensation to a *bona fide* possessor for erecting buildings on the land, or for planting the land, &c., the latter has the right to retain possession until the compensation due to him is paid. It was further laid down that it was not necessary expressly to reserve the *jus retentionis* in the final decree. The *jus retentionis* is a necessary legal consequence which automatically attaches whenever a right to compensation accrues to a *bona fide* possessor.

[1] (1938) 40 N. L. R. 169.

It is, therefore, clear that the first to fifth defendants are possessing the land under the *jus retentionis*. Their possession cannot be considered to be adverse, so as to afford them a foundation for a title by prescription.

I cannot understand the contention that there had been a surrender of the land to the first defendant and to Dingiriappu. Podimenika has denied this on oath. No evidence has been led for the defence, and there is no notarial deed produced to prove the surrender. The evidence makes it clear that as the owners were unable to raise the amount of compensation, they told the first defendant and Dingiriappu to possess the land till the money was found.

The claim that the right of the plaintiffs to tender compensation is barred by limitation is based on no known principle of law. Counsel for the respondents was unable to refer us to any section of the Prescription Ordinance on which such a contention could be based.

I set aside the decree appealed from, and enter judgment for the plaintiffs in regard to an undivided half of the land as prayed for, with damages at Rs. 50 up to date, and continuing damages of Rs. 25 *per annum* thereafter until possession is restored to the plaintiffs. The first to fifth defendants will be entitled to withdraw the sum of Rs. 156·25 deposited in Court. The first to fifth defendants will pay to the plaintiffs the costs both here and below.

NAGALINGAM J.—I agree.

Appeal allowed.

1949 *Present :* **Nagalingam J.**

ABEYAGUNASEKERE, Petitioner, *and* LOCAL GOVERNMENT SERVICE COMMISSION *et. al.*, Respondents

S. C. 403—IN THE MATTER OF AN APPLICATION FOR A MANDATE IN THE NATURE OF A WRIT OF CERTIORARI, AND IN THE MATTER OF AN APPLICATION UNDER SECTION 42 OF THE COURTS ORDINANCE

Writ of Certiorari—*Local Government Service Commission—Dismissal of officer—Inquiry—Administrative or judicial act—Excess of jurisdiction.*

A writ of *certiorari* will not lie to set right a wrong decision of a tribunal provided it is not one without or in excess of jurisdiction.

Obiter : The determination of the employment of an officer by the Local Government Service Commission is a quasi-judicial and not a purely ministerial act.

Suriyawansa v. The Local Government Service Commission (*1947*) *48 N. L. R. 433* dissented from.

APPLICATION for a writ of *certiorari*.

E. B. Wikramanayake, K.C., with *H. Wanigatunga*, for the petitioner.

N. K. Choksy, K.C., with *H. W. Jayewardene*, for 1st respondent.

Cur. v. vult.