

1914.

Present: Pereira J. and Ennis J.WICKREMESINGHE *v.* JAYASINGHE.

384—D. C. Colombo, 37,510.

Possessory suit—Valuation of subject-matter of suit is land itself.

The right asserted and claimed in a possessory suit is the right of perpetual possession of the land in claim as against the defendant. Owing to the impracticability of accurately valuing such a right, the course usually adopted is to regard the right as being equal in value to the value of the land itself. The value of the right of possession of the land for a year is a fallacious test.

A. St. V. Jayewardene and D. B. Jayatileke, for plaintiff, appellants.

Cur. adv. vult.

November 17, 1914. PEREIRA J.—

The simple question in this case is how the right in claim in a possessory action is to be valued. The learned District Judge is of opinion that the value of the right claimed in a possessory action is the value of possession for one year, because, as he says, the value of the right in question is to be ascertained by valuing the fact or event which creates the right. I cannot agree with him here at all. This Court has definitely held that, in a case of ouster by violence, proof of possession for a year and a day is not necessary to enable one to maintain a possessory action. If, therefore, in the one case the test of jurisdiction is the value of possession for a year and a day, by parity of reasoning, the test in the other case would, I suppose, be the cost of the violence used. I cannot accede to either proposition. The value of the subject-matter in a possessory action is the value of the right claimed, and that, so far as that action is concerned, is the right of perpetual possession of the land as against the defendant. It is as difficult to assess such a right as it is to assess the value of a right to an annuity in an individual case, but it is none the less necessary to assess it. The course usually adopted is to regard the right as being equal in value to the actual value of the land, and in the case of the *O. B. C. Estates Co. v. Brooks & Co.*¹ the Supreme Court found no fault with the plaintiffs for following that course. In the present case the parties have suggested no issue as to the value of the right claimed, and, therefore, I think that the assessment of that value by the plaintiff

¹ *1 S. C. R. 1.*

where he follows the usual course referred to above, might well be accepted.

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PEREIRA J.

I would set aside the order appealed from and remit the case to the Court below for proceedings in due course. All costs so far should, I think, be costs in the cause.

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ENNIS J.—I agree.

Set aside.

