1931 *Present:* **Macdonell C.J., Garvin S.P.J., and Drieberg J.**

AHAMADU LEBBE *et al. v.* ABDUL CADER *et al.*

367 and 368—D. C. Colombo, 34,834.

Privy Council—Application for conditional leave by defendants—Action to have meeting declared illegal—Plaintiff's valuation—Test of defendant's interest.

The plaintiffs sued the defendants to obtain a declaration that a meeting of the congregation of a mosque held for the purpose of approving of the appointment of priests made by the executive committee, &c., was irregularly held and to have the proceedings at the meeting declared null and void. There was a subsidiary cause of action in which the plaintiffs alleged that the defendants had not prepared half-yearly balance sheets and the relief asked for was that they be directed to prepare them. This cause of action was not pressed. The plaintiffs got judgment. The value set upon the action in the plaint was Rs. 6,000.

Held (in an application for leave to appeal by the defendants), that they were entitled to have leave, as the adverse effect of the judgment on their interest cannot be valued at less than its advantage to the plaintiffs.

THE plaintiffs brought an action to obtain a declaration that a meeting of the congregation of the Maradana mosque held on August 25, 1929, for the purpose of approving of the appointment of priests made by the executive committee, and for selecting a chartered accountant to audit the balance sheet was irregularly held and to have the proceedings declared null and void. In this cause of action the plaintiffs succeeded.

For the second cause of action, the plaintiffs alleged that the petitioners had not submitted half-yearly balance sheets as required by rule 15 of schedule 2 of Ordinance No. 22 of 1924, since January 1, 1927, and that the first to fifteenth petitioners had been paid by the Colombo Municipal Council a sum of Rs. 133,502.42 for the acquisition of a mosque property and that they had not accounted for it. The second cause of action was not pressed as the balance sheet had been submitted since the institution of the action.

The first to fifteenth defendants applied for conditional leave to appeal to His Majesty the King in Council.

H. V. Perera (with him *Marikar*, *Gratien* and *Salman*) for the first to fifteenth defendants, petitioners.—Every civil right must be valued. (*Section 40 of Civil Procedure Code.*)

The plaintiffs have valued their claim at Rs. 6,000 and we rely on their valuation in the absence of anything to the contrary in the judgment.

We cannot assess a right which we say does not exist.

The value is to be settled by the statement in the plaint (*Delmege v. Delmege* [1], *De Alwis v. Appuhamy* [2]).

[1] *1 N. L. R. 271.* [2] *30 N. L. R. 421.*

H. E. Garvin (with him *Jayewickrame*), for the plaintiffs, respondents.—The test for determining the value is the extent to which the judgment affects the interests of the petitioners who are prejudiced by it (*Allan v. Pratt* [1], *S. Kurukkal v. Subramaniam* [2]).

Quite apart from any value which the plaintiffs have set on their claim, the petitioners have to prove that they were prejudiced to the extent of Rs. 5,000 or more.

The assessment of Rs. 6,000 in the plaint is of two causes of action. There is no separate assessment of the first cause of action on which alone judgment has gone against the petitioners. There is nothing to show that the value of the first cause of action is Rs. 5,000.

L. A. Rajapakse, for sixteenth to nineteenth defendants, respondent.

H. V. Perera, in reply.—The adverse effect of the judgment on the interests of the petitioners cannot be valued at less than its advantages to the plaintiffs.

December 16, 1931. DRIEBERG J.—

The first to the sixth and the fifteenth defendants in appeal No. 368 and the seventh to the fourteenth defendants in appeal No. 367 apply for conditional leave to appeal to His Majesty the King in Council. Their application is opposed by the plaintiffs-respondents who say that the judgment sought to be appealed from is not one from which an appeal lies of right.

The main purpose of this action was to obtain a declaration that a meeting of the congregation of the Maradana mosque held on August 25, 1929, for the purpose of approving of the appointment of priests made by the executive committee and for selecting a chartered accountant to audit the half-yearly balance sheet of the executive committee was irregularly held and to have the proceedings at the meeting declared null and void. In this cause of action the plaintiffs succeeded. It was held that the meeting was irregularly held, it being limited to members of the congregation whom the petitioners had registered for the purpose of the meeting in an improper manner so as to exclude from the meeting a very large number of the congregation who had for some time been in opposition to the petitioners, who are the members of the executive committee.

For the second cause of action the plaintiffs alleged that the petitioners had not submitted half-yearly balance sheets as required by rule 15 of schedule 2 of Ordinance No. 22 of 1924 since January 1, 1927, and further, that the first to the fifteenth petitioners had been paid by the Colombo Municipal Council a sum of Rs. 133,502.42 for the acquisition of a mosque property and that they had not accounted for it. The relief asked for on this cause of action was that the first to fifteenth petitioners be directed to submit the balance sheets for the half-years from June, 1927, to June, 1929. The plaintiffs alleged that the subject matters of action were of the value of Rs. 6,000 and the property of the mosque was worth Rs. 2,000,000.

Issues were framed on the second cause of action, viz., whether the first to fifteenth petitioners were under an obligation to submit balance sheets, whether they failed to do so, and what sum was received by the first to fifteenth petitioners as compensation by the Municipality, whether they

[1] *(1888) 13 A. C. 780.* [2] *31 N. L. R. 165.*

accounted for the sum, and whether the first petitioner had wrongly appropriated from it a sum of Rs. 30,000; this last issue referred to the sum of Rs. 23,323.76 which the first petitioner retained as fees for his professional services in the matter of the acquisition.

The trial Judge in his judgment noted that as the balance sheet had been prepared since the institution of the action the second cause of action was not pressed.

The plaintiffs resist the application for conditional leave on this ground. They say that the test for determining value for this purpose is the extent to which the judgment affects the interests of the petitioners who are prejudiced by it. This is right, and it is the test referred to by Lord Selbourne in *Allan v. Pratt.*[1] They say that quite apart from any value which they have set on their claim the petitioners have to prove that they have been prejudiced to the extent of Rs. 5,000 or more by the judgment of this Court. They say, further, that even if the petitioners can claim that the value set by the plaintiffs should be accepted as the value for the present purposes of the petitioners, that the assessment of Rs. 6,000 in the plaint was of both causes of action; that there being no separate assessment of the first cause of action on which only judgment has gone against the first to the fifteenth petitioners, there is nothing to show that the value of that is Rs. 5,000. They say therefore that it is incumbent on the petitioners to show that the judgment entered against them on the first cause of action gives them a right of appeal.

As I have said, the main cause of action was the first, and the second was merely subsidiary to it. Objection was taken by the petitioners to issues 6, 7, and 8 which deal with the failure of the petitioners to account properly for the money received from the Municipality and the appropriation of part of it by the first petitioner; it was said that this was irrelevant as no relief was claimed in respect of it. Counsel for the plaintiffs claimed that these issues were necessary as it was their case that the petitioners had dealt improperly with the mosque funds and that this was one reason for their arranging the packed general meeting from which they illegally excluded members of the congregation in opposition to them.

It appears to me that the other averment of the second cause of action that the petitioner had not submitted balance sheets was made for the same purpose. Under rule 15 the duty is cast on the managing trustee and the treasurers of the executive committee of individually or jointly furnishing the executive committee with a half-yearly balance sheet; the selection of a chartered accountant to audit these is left to the congregation. The balance sheet after audit has to be sent to the members of the Board of trustees and to such members of the congregation as may ask for it. It is not easy to see how a decree could be entered in terms of the prayer against the petitioners to " submit " a balance sheet and to whom this is to be submitted. As members of the congregation or in their special capacity of members of the Board of trustees the plaintiffs might compel the petitioners as members of the executive committee to submit to them a duly audited balance sheet, but these balance sheets, if they were ever prepared, were never duly audited. It was officially stated at the meeting of August 25 that the accounts, except for the half-year

[1] *(1888) 13 A. C. 780.*

preceding the meeting, had been written in Tamil and that it was not possible for that reason to have them audited by a chartered accountant.

The petitioners and other members of the executive committee were guilty of neglect of duty in not insisting on the managing trustee and treasurers preparing the balance sheets for audit but, as I have said, the only real purpose in bringing this in was to show a further reason the petitioners had for excluding hostile critics from the general meeting.

I cannot regard the relief sought under the second cause of action as susceptible of any separate and distinct valuation apart from the first and it must be taken that judgment has gone against the petitioners for relief which the plaintiffs have valued in their plaint at Rs. 6,000.

An exact valuation is not possible in such a claim as this. Section 40 of the Civil Procedure Code provides that in an action to enforce a right status or privilege the plaint need only state approximately the value of that right status or privilege. This action obviously could not be brought in a Court of Requests which has a jurisdiction of Rs. 300. In valuing their claim at Rs. 6,000 and not under Rs. 5,000 the plaintiffs in my opinion intended to value it at an amount which would secure for themselves the advantage of an appeal to the Privy Council if they failed here. The petitioners in their answers did not say that the value of the claim was under Rs. 5,000, no issue was framed regarding value, and I take it that the petitioners accepted the valuation as one which would entitle them, if necessary, to take the case to the Privy Council.

Cases no doubt arise where the value of the judgment obtained by a plaintiff is not the same as its value considered as it affects the interests of the defendant. An instance of the value to the defendant of an adverse judgment being greater than the value laid by the plaintiff in his claim is to be found in the case of *MacFarlane v. Leclaire*[1] but ordinarily there can be no difference in an action such as this between the value of the judgment considered as the advantage gained by the plaintiff and, from the point of view of the defendant, as the loss or damage to him.

In this case the adverse effect of the judgment on the interests of the petitioners cannot possibly be valued at less than its advantage to the plaintiffs and the plaintiffs' objection cannot succeed.

The sixteenth, seventeenth, eighteenth, and nineteenth defendants supported the objection of the plaintiffs regarding the value of the action and raised a further objection. Mr. Rajapakse for them contended that they were not necessary parties to the appeal, and that the petitioners' appeal against them was only on the question of costs. It is sufficient as regards these defendants to say that all we have to decide on this application is whether the petitioners have a right of appeal under rule 1 (*a*) of schedule 1 of the Courts Ordinance, and if they have this right I do not think it is within our power to direct that these defendants should not be made parties to the appeal.

The application of the petitioners is allowed with costs against the plaintiffs and the sixteenth, seventeenth, eighteenth, and nineteenth defendants.

MACDONELL C.J.—I agree.

GARVIN S.P.J.—I agree.

Application allowed.

[1] *Privy Council Cases 181.*