Present : Schneider J.

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WEERASINGHE *v.* MUNICIPAL COUNCIL OF KANDY.

335—C. R. Kandy, 1,013.

Court of Requests—Action objecting to assessment—Appeal on facts—Leave necessary.

In an action in a Court of Requests objecting to assessment under the Municipal Councils Ordinance, there is no appeal on facts without the leave of the Commissioner.

PLAINTIFF brought this action objecting to the assessment of the annual value of certain premises by the Municipal Council of Kandy. The Commissioner of Requests (W. O. Stevens, Esq.) upheld the objection. The defendant Council appealed on the facts with the leave of the Commissioner. The respondent's counsel took the objection that no appeal lay without the leave of the Commissioner of Requests. The fact that leave was granted was not ascertained till after the judgment of the Supreme Court was delivered.

Soertsz, for defendant, appellant.

H. V. Perera, for plaintiff, respondent.

February 28, 1924. SCHNEIDER J.—

Under the provisions of the Municipal Councils Ordinance, No. 6 of 1910, the defendant Council assessed the annual value of certain premises belonging to the plaintiff. The plaintiff succeeded in his objection to the assessment. The defendant Council has preferred this appeal against the judgment of the Commissioner of Requests. The appeal is upon pure questions of fact. A preliminary objection was taken to the appeal on the ground that no appeal lay upon the facts, except with leave obtained in accordance with the provisions of section 13 of the Court of Requests Amendment Ordinance, No. 12 of 1895. The preliminary question argued was whether this objection was well founded. If it should succeed, the appeal would fail and would have to be dismissed. For the decision of the objection against the appeal, it is not necessary to refer to any legislation prior to the Municipal Councils Ordinance, No. 7 of 1887, except the Ordinance No. 5 of 1867, which is connected with it. By the combined effect of section 141 of the Ordinance No. 7 of 1887 and the Ordinance No. 5 of 1867, a special jurisdiction was conferred on Court of Requests to hear and determine actions founded on objection to assessment of the annual value of any premises where the rate or rates did not exceed Rs. 100 and District Courts where it did. A right of appeal was given from the decisions of such Courts. Section 141 was to the effect that if any person

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were aggrieved by any assessment it should "be lawful for him to object to and appeal against such assessment in manner provided by Ordinance No. 5 of 1867." Section 1 of Ordinance No. 5 of 1867 demarcated the boundary line between the jurisdiction of the two classes of Courts, and proceeded to enact "Such Court shall decide upon such objection in a summary way and have power to amend the assessment or to supply any omission if necessary, and its decision shall be subject to appeal to the Supreme Court, which shall have like power of amendment, and each of the said Courts shall have power to give costs." Sections 2 and 3 of that Ordinance are as follows :—

"2. Neither the objection nor the appeal shall stay the levying of any part of the rate which may be proceeded with ; the excess (if any) collected shall in such case be refunded, or the deficient amount (if any) shall be collected, according to the decision of such Court of Requests or District Court, if there be no appeal, or of the Supreme Court in case of appeal."

"3. The Judges of the Supreme Court may from time to time and subject to the provisions of the Ordinance No. 8 of 1846, or any other Ordinance to be in that behalf hereafter enacted, make rules and orders as to the notices and the hearing of objections and appeals : Provided that such rules and orders shall not be inconsistent with or repugnant to the provisions of this Ordinance."

I am not aware that the Judges of the Supreme Court made any special rules in pursuance of the powers conferred by the above section 3 as to the matters mentioned therein, nor does it signify if they did. The next statutory provision connected with the subject was the Courts Ordinance, No. 1 of 1889. This Ordinance repealed the Ordinance No. 8 of 1846 referred to in that section. The Ordinance No. 8 of 1846 was concerned with the administration of justice and rules of Court framed by the Supreme Court. The Ordinance No. 1 of 1889 was intended "to consolidate and amend the laws relating to the constitution, jurisdictions, and powers of Courts for the administration of justice in this Colony." In chapter VII. (sections 77 to 82) Courts of Requests are dealt with. In section 80 the general right of appeal is provided for. It is as follows :—

"80. Any party who shall be dissatisfied with any final judgment, or any order having the effect of a final judgment, pronounced by the Commissioner of any Court of Requests may (excepting where such right is expressly disallowed) appeal to the Supreme Court against and such judgment or order for any error in law or in fact committed by such Commissioner."

The exception provided for in that section is to be found in a subsequent Ordinance dealing with Courts of Requests. It is the Ordinance No. 12 of 1895 already referred to. By section 13 of that Ordinance it was enacted that there should be no appeal from a judgment or an order having the effect of a final judgment in cases for debt, damage, or demand, except with leave obtained from the Commissioner of Requests or from the Supreme Court, or upon a matter of law, or the admission or rejection of evidence. While the statutory law was in this state, the case of *Jalaldeen v. The Colombo Municipal Council*[1] came before the Supreme Court. It was an application for leave to appeal on the facts and also an appeal on the law. In 1908 Wood Renton J. disposed of the application for leave to appeal upon the ground that it was not a case in which the Supreme Court should grant leave. The appeal on the law came up originally before Wendt J. who referred it to a bench of two Judges. It was heard and determined by Hutchinson C.J. and himself in 1909. Two questions of law were argued. First, whether the Court of Requests had jurisdiction, inasmuch as the rate was above Rs. 100 but below Rs. 300, and the Court of Requests Ordinance, No. 12 of 1895, had raised the general jurisdiction of such Courts to Rs. 300. Secondly, if it did not have jurisdiction, whether an appeal lay as of right on the facts. On the first question they held that the enhancement of the general jurisdiction of Courts of Requests by the Ordinance No. 12 of 1895 did not affect the special jurisdiction conferred on those Courts by the combined effect of Ordinance No. 5 of 1867 and Ordinance No. 7 of 1887. The second question which is identical with that raised by this appeal did not accordingly arise for decision, and was not disposed of by those learned Judges. When the next important amendment of the Municipal Councils Ordinance of 1887 was made by the introduction of the present Ordinance No. 6 of 1910, presumably to meet the judgment of the two Judges in this case, section 124 of that Ordinance was enacted. It is necessary to examine carefully the provisions and language of that section. Unlike its predecessor this Ordinance contains no reference to the Ordinance No. 5 of 1867. The procedure, therefore, in cases of objection to assessments made by the Municipal Councils is to be found in that section, the effect of which was undoubtedly to repeal the former law which embodied the Ordinance No. 5 of 1867. The question which accordingly arises for determination on this appeal is whether this section contains the whole of the law relating to the jurisdiction of Courts of Requests to hear and determine such actions and appeals connected therein.

I shall now proceed to examine that section. It has five sub-sections. In the first of these it conferred jurisdiction upon Courts of Requests to entertain actions objecting to assessment in all cases

[1] *4 App. Ct. Rep. 131 ; 1 Cur. L. R. 34.*

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where the amount of the rate or rates does not exceed Rs. 300. The effect of this legislation was to fix the same amount as being the pecuniary limit in all cases in Courts of Requests whether of objection to assessment or of any other description. In other words that act of the Legislature clearly indicated that though a special principle of ascertaining the monetary limit was to be adopted in assessment cases, yet that was to make no difference. It should be here observed that the jurisdiction is conferred in precise words : The person aggrieved " may institute an action."

Sub-section (2) set at rest a controversy which had existed previously by expressly enacting that the objector must be confined to the grounds stated in his written objection to the Chairman.

Sub-section (3) enacts that the Court shall follow the ordinary regular procedure in hearing and determining such actions. This provision was made, it appears to me, for two reasons : First, because it was realized that as a special principle was prescribed for determining the pecuniary value of the action it was considered not wise to omit reference to the procedure which should be followed ; and secondly, because this section was repealing and replacing a section of the former Municipal Councils Ordinance which expressly referred to the Ordinance No. 5 of 1867, wherein the procedure was described as summary, a term not precisely accurate when applied to the Civil Procedure Code of 1889. In the latter part of this sub-section occur the words : " And the decision of such Court shall in all cases be subject to appeal to the Supreme Court." These are the important words in the decision of this appeal. I shall proceed to consider them after mentioning the provisions of sub-sections (4) and (5).

Sub-section (4) was apparently meant to make a provision similar to section 3 of Ordinance No. 5 of 1867. It enacts that an appeal in assessment cases shall be governed by the provisions of chapter LVIII. of the Civil Procedure Code, 1889. That chapter is concerned only with the procedure for preferring and prosecuting an appeal, and has no reference to any rule governing the right to appeal.

Sub-section (5) is the re-enactment of section 2 of the Ordinance No. 5 of 1867 with a very slight and immaterial verbal alteration.

Two arguments were addressed to me in support of the appeal, and against the preliminary objection to it. It was argued that the words " in all cases be subject to appeal to the Supreme Court " conferred a right of appeal, special and distinct, from the general law. I am unable to accept this argument. Those words are inappropriate if the intention was to confer a special right of appeal. I think that they do no more than imply that a right of appeal exists. It was necessary to say that because a special principle for determining jurisdiction was being enunciated. If the words " subject to appeal to the Supreme Court " are sufficient to confer

a right of appeal, there was no necessity in the Ordinance No. 7 of 1887 to use language which in unmistakable terms conferred a right of appeal when it expressly referred to the provisions of the Ordinance No. 5 of 1867 in that connection. The latter Ordinance expressly enacted that decisions in assessment cases "shall be subject to appeal to the Supreme Court." And yet the Ordinance No. 7 of 1887 had the words that if any person were aggrieved "it shall be lawful to him to object and appeal against such assessment in manner provided by the Ordinance No. 5 of 1867." It is probably in view of this language used in these two Ordinances that Wood Renton J. in the case already referred to said that the appeal was governed by the "combined effect" of the two Ordinances. That the Legislature did not intend to confer a right of appeal by the use of those words is apparent from the language used in other Ordinances when the intention was undoubtedly to confer jurisdiction. Take sections 75 and 80 of the Courts Ordinance conferring the right of appeal in District Court and Courts of Requests cases. The words used are the same—the aggrieved party "may appeal." In the Ordinance No. 7 of 1887 the words were "it shall be lawful." The change of language from "it shall be lawful to appeal" in Ordinance No. 7 of 1887 to "subject to appeal" in No. 6 of 1910 is surely not without significance. It is not possible to conceive that the draftsman or the Legislature had lost sight of the provisions of section 13 of the Court of Requests Ordinance, No. 12 of 1895, or of the effect on conferring a special jurisdiction, because the very first sub-section was intended to counteract the effect of the judgment in *Jalaldeen v. The Colombo Municipal Council* (*supra*), the principle of the decision of which was that the Court of Requests Ordinance had not affected the special jurisdiction conferred by Ordinance No. 5 of 1867, which same jurisdiction was conferred by section 124. Another reason why I am not disposed to uphold that argument is that it seems to me obvious that the intention of the Legislature in enacting section 124 of the present Municipal Councils Ordinance was to do no more than expressly raise the jurisdiction of Courts of Requests from Rs. 100 to Rs. 300 in assessment cases, and to make it clear that the procedure in such cases should be the same as in all other cases. That reason applies equally to the second argument addressed to me that as regards appeals in such cases the Legislature intended by the enactment in sub-section (4) that only chapter LVIII. of the Civil Procedure Code should apply. It is not possible to entertain the argument that a special provision was intended to and did in fact override a provision on the same point in the general law, unless that intention is clearly manifested by the language used. The language and even the general purport of section 124 fail to disclose any intention that the general principles governing the right of appeals should not apply to

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appeals in cases of objection to assessments. Lastly no reason occurs to me why a larger right of appeal should be allowed in such cases, especially when by this very section the Legislature discountenanced any special limitation as regards jurisdiction in such cases. This case comes within the category of cases described as "for demand" in section 13 of the Ordinance No. 12 of 1895. It is therefore governed by the provisions of that section, and the appeal must fail in the absence of leave to appeal. In view of the law as it stood before this decision, the defendant Council can plead some justification for the procedure it had followed, but I feel I should not be acting fairly by the respondent unless I gave him his costs. I therefore dismiss the appeal, with costs.

Appeal dismissed.

The appeal in this case was subsequently argued on the facts before Garvin A.J. on May 22, 1924, as it was discovered that the appeal was with the leave of the Commissioner. The appeal was dismissed.