1940 *Present :* **Soertsz and Keuneman JJ.**

SAMYNATHAN *v.* ATUKORALE.

78—D. C. (Inty.) Ratnapura, 5,916 with 135—D. C. (Final) Ratnapura, 5,916.

Stamps—Value of action for purposes of fixing stamp duty—Value placed on subject-matter in pleadings is the test—Petition of appeal stamped according to value of land stated in plaint.

An action remains throughout the proceedings, for the purpose of levying the stamp duty, in the class in which the pleadings placed it unless an order of the Court at a relevant stage of the case put it in a class of higher or lower value.

***Sinnetamby v. Tangamma* (1 C. A. C. 151) followed.**

***Bartleet v. Perera* (15 C. L. W. 3) distinguished.**

AN appeal from a judgment of the District Judge of Ratnapura.

A preliminary objection was raised by the plaintiff-respondent on the ground that the petition of appeal had been insufficiently stamped.

The defendant-appellant stamped the petition of appeal upon the basis of the value of the lands as stated in the plaint.

R. L. Pereira, K.C. (with him *M. T. de S. Amerasekere, K.C.*, and *C. S. Barr Kumarakulasingham*), for the plaintiff, respondent, takes preliminary objection.—The appeal is not properly constituted. Adequate stamps have not been supplied by the appellant. The petition of appeal has been stamped on the footing of the value mentioned in the plaint. In point of fact the value of the subject-matter of the action, whether determined by the value of compensation claimed in the answer or by the value fixed by the defendant to the lands in dispute, is higher than the sum mentioned in the plaint. Further, the District Judge himself has assessed the value of the lands at Rs. 88,000. *Bartleet v. Perera*[1] is directly in point. See also *In re Porkodi Achi*[2] and *In re G. B. Seethayamma*[3].

H. V. Perera, K.C. (with him *N. E. Weerasooria, K.C., E. A. P. Wijeratne*, and *A. E. R. Corea*), for the defendant, appellant.—There is no substance in the objection. When there is a claim and a counter-claim, the bigger of the two, and not their aggregate, determines the value of the action—*Little's Oriental Balm and Pharmaceutical, Ltd. v. P. P. Saibo*[4]. In the present case the actual claim in reconvention (Rs. 7,500) is less than the value of the subject-matter in dispute, as assessed in the plaint. The incidental statement in the answer that we had spent Rs. 100,000 for improvements cannot be regarded as a formal claim. Further, the compensation for any improvement is essentially less than the value of the land on which it is put up; the part can never be greater than the whole.

In our law stamping is decided according to the value which emerges from the pleadings and is not dependent on the value of the interest involved in the appeal—*Sinnetamby v. Tangamma*[5]. In the absence of a

[1] (1939) 15 C. L. W. 3.
[2] (1922) A. I. R. Mad. 211.
[3] (1925) A. I. R. Mad. 323.
[4] (1938) 40 N. L. R. 441.
[5] (1912) 1 C. A. C. 151.

superseding order of the Court the class of a case is determined by the pleadings. Under-valuation of the subject-matter of an action is on a different footing from under-stamping. In the latter case no express order of Court is necessary to invalidate a document which is not stamped according to the value which already appears on the face of the document. Sections 32 and 33 of the Stamp Ordinance (Cap. 189) bear reference to impounding only. Under section 35, when a judicial officer impounds a document, he does not consider the valuation. Section 87 of the Stamp Ordinance enables the Court to consider the question of valuation in testamentary cases only. Even in non-testamentary cases Court can do so, but only under section 46 of the Civil Procedure Code. Unless, therefore, an order is made by Court under section 46 (*g*) of the Civil Procedure Code altering the class the stamping is done according to the valuation contained in the claim or counter-claim, whichever is greater.

The position in India is different. *In re Porkodi Achi* (*supra*) and *In re G. B. Seethayamma* (*supra*) are decisions based on the Indian Court Fees Act which contains special provisions for stamping regarding the subject-matter in dispute in the appeal. In Ceylon the class of a case is decided once for all in the District Court.

R. L. Pereira, K.C., in reply.—The Indian cases, already cited, were decided independently of the Court Fees Act.

The damages claimed should be included for the purpose of the valuation of an action, *Sinnappoo v. Theivanai*[1], *Maitripala v. Koys*[2].

The Supreme Court is specially responsible for documents being properly stamped, *Bartleet v. Perera*[3].

Cur. adv. vult.

June 26, 1940. SOERTSZ J.—

Counsel for the plaintiff-respondent takes a preliminary objection to the hearing of this appeal on the ground that the petition of appeal is insufficiently stamped, and that the stamps tendered for the certificate in appeal and for the decree of this Court are also insufficient. If this objection is sound, it is clearly fatal to the appeal. The stamps affixed and furnished by the defendant-appellant are, admittedly, in accordance with the value of the matter in litigation as averred in the amended plaint filed by the plaintiff-respondent himself, but respondent's Counsel contends that the question of the sufficiency of the stamps must be determined, at this stage, in this case (*a*) with reference to the value of the improvements claimed by the defendant, and stated by him in his answer to be over Rs. 100,000, or (*b*) with reference to the value of Rs. 90,000 fixed by the defendant in his answer, as the value of the lands in litigation, or (*c*) at least with reference to the value of the lands that emerges as Rs. 88,000 as a result of the answer given by the trial Judge to issue No. 23.

In regard to these contentions, I have had little difficulty in reaching the conclusion that in the circumstances of this case the value put upon his improvements generally, and the value put upon the land in litigation by the defendant-appellant have no bearing on the question of the value of the action for the purpose of fixing the stamp duty payable. These

[1] *(1937) 39 N. L. R. 121.* [2] *(1939) 14 C. L. W. 112.*
[3] *(1939) 15 C. L. W. 3 at 6.*

values occur in the course of allegations made by the defendant in his answer, but were not made by him the basis upon which to found an actual claim in reconvention. The only claim made by way of reconvention, in the proper meaning of that phrase, was a claim for Rs. 7,500 on account of damages, said to have been sustained by the defendant, in consequence of the injunction which he alleged the plaintiff had wrongfully and unlawfully obtained in this case. Apart from this claim in reconvention, the defendant's chief prayer in regard to the plaintiff's case was that it should be dismissed, but he took the precaution to ask in the alternative that in the event of the plaintiff being declared entitled to any portion of the land in litigation, he be condemned to pay the defendant compensation for improvements found to have been effected by him on that portion. Obviously, no value could have been placed on such a claim at that stage. Its value must necessarily depend on the ultimate finding by the Judge in regard to the title to the bare land involved in the litigation. Therefore, in my opinion, the mere fact that the defendant-appellant in the course of his answer stated that he "has planted and erected valuable buildings and cooly lines upon and otherwise improved an extent of 200 acres from lots 18 and 41 and 10 acres from lots 14 and 14A at an expense of over Rs. 100,000" is really of no consequence. The plaintiff, at no stage, claimed more than 176 acres, and at the time the defendant made the statement I have referred to in his answer, there was nothing to show that the major part in value of the defendant's improvements fell within the land claimed by the plaintiff. Counsel for the respondent has invited our attention to the evidence given by the defendant-appellant where he said "I have claimed Rs. 100,000 as compensation in the event of my not being declared entitled to the land." I do not think we can take any notice of this. The statement is inaccurate. The defendant-appellant did not claim Rs. 100,000, nor did he claim to be declared entitled to the land. All he asked for was a dismissal of the plaintiff's action, and for an investigation into the question of compensation, in the event of the plaintiff being declared entitled to any part of the land found to have been improved by him. Such a claim for any unliquidated amount by way of compensation or set off cannot, in my opinion, be accurately described as a claim in reconvention.

The case of *Bartleet v. Perera*[1] has no application here. The defendant in that case made a claim in reconvention that was higher than the claim the plaintiff had made. In other words, he brought into the case a claim involving a larger sum of money than was involved in the plaintiff's claim and, once that happened, it necessarily followed that the stamping had thereafter to be on the basis of the new value imported into the suit.

Then, in regard to the argument based on the value of Rs. 90,000 put upon the land by the defendant-appellant, that again in my opinion does not affect the question. There has been no finding by the Judge, at any stage, in regard to this conflict in values for the purpose of fixing the stamp duty that was leviable, and no order was made by him with that matter in view. There seems to me to be no justification for saying that when a defendant puts a higher value on the matter in litigation than was placed upon it by the plaintiff, there results an alteration in the class of

[1] *15 C. L. W. 3.*

the case. To say the least, in the absence of an order by the trial Judge in regard to the value of the matter in litigation, there is no good reason that I can find in law, or in logic, for preferring the value fixed by the defendant to that given by the plaintiff.

The next question that arises for consideration is whether the value put upon the lands by the trial Judge in answering issue No. 23 results in placing this action in a higher class, at least, as from the date of that finding. In my opinion it does not, so long as the trial Judge has not made that finding a basis for an order that instruments and documents in the case should be stamped in accordance with his finding. There is no such order here. Even if there had been such an order, and the plaintiff appealed against it, it seems to me that the petition of appeal would be correctly stamped, if its stamping were in accordance with the value put upon the action by the plaintiff. But in reality, in this case, the answer to issue No. 23 appears to have been sought, and to have been given in view of the claim for improvements. The question of sufficient stamping does not seem to have been contemplated by Counsel when that issue was framed, or by the Judge when he answered it.

It only remains for me to refer to the Indian cases relied upon by Counsel for the respondent. The applicability of those cases must depend upon the identity of the context in which those decisions were given with the context in which this question arises before us. So far as the material disclosed in the judgments in those cases is concerned, it would appear that the point involved in the case of *In re Porkodi Achi*[1] arose under a particular act known as the Court Fees Act, which provides for the classification of suits in different ways, for the purpose of ascertaining the Court fees payable by the parties to the litigation. For that purpose, suits for possession of immovable property are placed in one class, suits for money in another, and so forth. The learned Judge in that case after reviewing a number of authorities said "The current of authority is clearly in favour of the view that the value of an appeal is *not in all cases* the value of the suit as originally filed but the value of the relief granted by the decree which a party wishes to get rid of." This dictum is not quite accurately worded, at least, so far as the report before us goes. What the learned Judge appears to have intended to say is that "the current of authority is clearly in favour of the view that the value of an appeal is not in all cases the value of the suit as originally filed," but may in some cases, be the value of the relief granted by the decree which a party wishes to get rid of. This dictum, however, hypothesizes for its applicability, a case in which the value of the suit as originally filed and the value of the relief granted are different. In the case before us the relief given to the plaintiff is the relief he sought subject to the payment of certain compensation for improvements. But the appellant here seeks to get rid of the relief given to the plaintiff in the decree in that it declares him entitled to the land he sought to vindicate. If he succeeds in obtaining that relief, the question of compensation for improvements does not arise. For this reason alone my view is that this case has no application. Nor, in my opinion, has the other Indian case cited to us, *In re G. B. Seethayamma*[2] application. In that case, the plaintiff obtained a decree

[1] *(1922) A. I. R. Mad. 211.*

[2] *(1925) A. I. R. Mad. 323.*

against the 11th defendant for the recovery of a half share of certain lands on payment to the eleventh defendant of Rs. 12,000. The eleventh defendant appealed and asked that the plaintiffs' suit for recovery of possession of the lands in question be dismissed. It was contended by him that the Court fee payable on the appeal should be ascertained by deducting Rs. 12,000 from the market value of the lands. The learned Judge rejected this contention, and pointed out that the appellant "seeks to have the decree of the lower court, which directed the possession of the lands to be given to the other side, set aside. It is clear that in such a case the subject-matter of the appeal is the land and not any money." This decision, if applicable at all, seems to support the case for the appellant on the point we are considering. But my view is that these cases have hardly any application under our stamping law in which there is no classification of suits on the lines of the Indian Court Fees Act and in which a suit remains throughout the proceedings, so far as the local courts are concerned, in the class in which the pleadings placed it, unless, of course, an order of the court at a relevant stage of the case put it in a class of higher or lower value. The ruling in the case of *Sinnetamby v. Tangamma*[1] supports this view.

For these reasons I hold that the preliminary objection fails, and I overrule it.

KEUNEMAN J.—I agree.

Objection overruled.