Present : De Sampayo J. 1922.

In re an Application under Ordinance No. 20 of 1919 against CANTLAY.

Vexatious Actions Ordinance, No. 20 of 1919—Ability to pay costs of unsuccessful actions—Number of actions—Possible cause of actions.

In an application by the Attorney-General under section 2 (1) of the Vexatius Actions Ordinance, No. 20 of 1919, for an order that no civil legal proceedings shall be instituted by the respondents in any Court unless they obtain leave of the Supreme Court, the fact that respondents have paid the costs of various unsuccesaful actions is not a ground for refusing the application, if the litigation was in fact vexatious.

"Nor is the question dependent on the number of actions instituted, nor upon any consideration whether there may not have been possible cause of action in some of the cases. What we have to look at is the general character and result of the number of actions brought by the respondents."

THE facts are set out in the judgment.

Illangakoon, C.C., for the applicant.

D. B. Jayatilleke, for the respondents.

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May 28, 1921. DE SAMPAYO J.—

This is an application by the Attorney-General under section 2 (1) of the Vexatious Actions Ordinance, No. 20 of 1919, for an order that no civil legal proceedings shall be instituted by the respondents in any Court unless they obtain leave of the Supreme Court and satisfy the Court that such legal proceedings are not an abuse of the process of Court, and that there are *primâ facie* grounds for such proceedings. Section 2 (1) of the Ordinance enacts as follows:—

> "It shall be lawful for the Attorney-General to apply to the Supreme Court or a Judge thereof for an order under this Ordinance, and if he satisfies such Court or Judge that any person habitually and persistently instituted vexatious civil legal proceedings in any Court, and whether against the same person or against different persons, such Court or Judge may, after hearing such person or giving him an opportunity of being heard after assigning counsel in case such person is unable on account of poverty to retain counsel, order that no civil legal proceeding shall be instituted by that person in any Court unless he obtains the leave of the Supreme Court or a Judge thereof, and satisfies the Court or Judge that such legal proceeding is not an abuse of the process of the Court, and that there is *primâ facie* ground for such proceeding."

The first respondent, Mrs. Laura Rose Cantlay, is the mother of the second and the third respondents, and was, at all times relevant to this application, their attorney in Ceylon. The respondents were entitled to certain undivided shares of and in an estate known as Mipitiyakande estate, situated in the district of Kegalla, which was the subject of a partition action No. 3,135 in the District Court of Kegalla. By deed No. 4,594 dated December 9, 1911, the respondents and one Charles Francis Cantlay, who was another son of the first respondent and a shareholder in the said estate, agreed to sell and convey their undivided shares to G. A. H. Vanderspar and E. H. A. Vanderspar for a sum of £7,500 sterling, and with a view of enabling them to make a valid sale they further agreed that they would move to withdraw the said partition action No. 3,135 or join in any such motion or application. The respondents having failed to carry out the said agreement No. 4,594, Messrs. Vanderspar on September 11, 1912, instituted action No. 34,263 of the District Court of Colombo against the respondents to compel specific performance of the said agreement. Meanwhile, decree had been entered in the partition action, whereby a specific portion of the said estate was allotted to the first respondent, and another specific portion to the second and third respondents and the said Charles Francis Cantlay, and a sum of Rs. 5,333.89 had been awarded as compensation to

the first respondent and a sum of Rs. 2,666.94 to the second and third respondents and the said Charles Francis Cantlay. The first respondent drew the whole of the said sum of Rs. 5,333.89, and the second and third respondents drew a sum of Rs. 1,777.96 being their proportionate share of the said sum of Rs. 2,666.94.

In the said action No. 34,263 the District Judge decreed specific performance requiring the respondents to transfer to Messrs. Vanderspar the divided portions of the estate allotted to them in the partition action, and from that decree the respondents appealed to the Supreme Court. Up to this time the respondents had been represented by Messrs. Julius & Creasy as their proctors, but on November 19, 1913, their proxy, on the application of the respondents and with the consent of Messrs. Julius & Creasy, was revoked, and on November 21, 1913, Mr. Hislop, an assistant or partner of Mr. O. Tonks, proctor, filed a proxy from the respondents. As regards the appeal taken by the respondents, a settlement was arrived at (Mr. Hislop acting for the respondents in that connection), and on October 1, 1913, a decree of consent was entered on the following terms:—

(1) The respondents to convey to Messrs. Vanderspar as from January 1, 1912, the specific portions of Mipitiyakande estate allotted to them in severalty in the partition action.

(2) The respondents to be paid the proportionate shares payable to them of the sum of £7,500, the purchase price agreed upon, deducting, however, therefrom the following sums:—

(*a*) The amount of compensation received by the respondents in the said partition action No. 3,135, the right, if any, of the respondents to sue the plaintiffs for repayment of the same or any part thereof being reserved.

(*b*) The amount of profits earned by the respondents for their said divided portion of the said Mipitiyakande estate from January 1, 1912.

(*c*) The amount of damages, if any, which the plaintiffs might show to have been sustained by reason of non-cultivation, over-plucking, or over-tapping by the respondents of their divided portions of the said estate.

When the case went back to the District Court, the parties agreed as to the amount of compensation, damages, and profits which were to be deducted from the purchase money and as to the amount in rupees due as purchase money, and the deed of conveyance was signed on December 2, 1913, in pursuance of the decree.

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Then followed a series of actions instituted by the respondents, upon which the Attorney-General relies, as showing that the respondents have habitually and persistently instituted vexatious civil legal proceedings. These actions are the following:—

(1) D. C. Colombo, 37,998, instituted by the respondents against Messrs. Vanderspar on February 4, 1914, claiming Rs. 17,084.69 as interest on the purchase money from January 1, 1912, to December 2, 1913, on the ground that during that period the defendants had control and management of the respondents' shares of the said estate and appropriated all the profits thereof. This action was dismissed by the District Judge on the ground that the consent decree in appeal precluded the respondents from making the claim for interest, and the dismissal was affirmed in appeal.

(2) D. C. Colombo, 38,489, instituted by the respondents on May 15, 1914. against Messrs. Vanderspar, claiming repayment of Rs. 8,049.35, being the amount of compensation deducted from the purchase money, and also claiming on four other causes of action various sums aggregating Rs. 665.77 as damages for unlawful detention of certain articles of furniture and building materials. The District Judge dismissed the claim for repayment of the amount of compensation, but ordered delivery to the respondents of certain articles, or in default the payment of Rs. 270. The Supreme Court in appeal affirmed this judgment.

(3) D. C. Colombo, 40,557, instituted on December 8, 1914, by last respondent, claiming from Mr. Tonks, proctor, the sum of Rs. 3,879.27 as balance payable to her and the second and third respondents out of moneys received by Mr. Tonks on their behalf. Mr. Tonks pleaded that this sum was retained by him in respect of costs due to him in four actions in which he had acted for the respondents. This action was dismissed, both in the District Court and in the Appeal Court.

(4) D. C. Colombo, 41,506, filed in person by the first respondent against Mr. Tonks, claimed Rs. 15,000 as damages for libel, in that Mr. Tonks had in a letter to counsel, written: "Between ourselves, I am having a good deal of trouble with this lady over costs, and I intend to get them paid down before I make any more appearances." The District Judge dismissed the action, remarking that it was a purely speculative action, and that the plaintiff had eagerly seized an opportunity to harass and vex the defendant who had just before claimed a large sum for professional work done.

(5) D. C. Colombo, 42,795, filed in person by the first respondent for herself, and as attorney of the second and third respondents against Mr. Tonks, claiming Rs. 34,767.52 as damages on the ground that he, contrary to the respondents' instructions, and without any authority, wrongly consented to a variation in appeal of the District Judge's judgment in the above case No. 34,263. The District Judge found against the respondents on the facts, and held that the respondents knew and approved of the settlement and acted upon it. This judgment was affirmed in appeal.

(6) D. C. Colombo, 48,981 ; claim of Rs. 50,000 as damages against Mr. Tonks on the grounds—

(1) That Mr. Tonks filed a proxy in above case No. 34,263 alleged to have been given by the first respondent, and acted without authority ;

(2) That he engaged counsel without authority ;

(3) That he failed to apply for type-written copies in the said action in time ;

(4) That he without authority consented to payment of costs in the said action ;

(5) That he falsely alleged in above action No. 42,795 that he had authority to act in the said action No. 34,263; and

(6) That he wrongly and unlawfully left out C. F. Cantlay's share from the sale of the estate to Messrs. Vanderspar.

The action was dismissed both in the District Court and in the Supreme Court in appeal.

(7) D. C. Colombo, 52,457, against Mr. Tonks for Rs. 30,000 as damages for cancellation of the original agreement with Messrs. Vanderspar, for declaration of title to and possession of the portions of the estate allotted to the respondent in the partition action, it being alleged that Mr. Tonks was guilty of various acts of fraud in connection with the above cases regarding Mipitiyakande estate and its transfer to Messrs. Vanderspar. The District Judge on March 15, 1919, on the motion of the defendant, stayed proceedings and dismissed the action, holding that it disclosed no reasonable ground of action, and that it was frivolous and vexatious and constituted an abuse of the processes of Court. No appeal was taken.

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(8) D. C. Kegalla, 5,684, against Messrs. Vanderspar instituted on December 18, 1920, substantially repeating all that had been alleged in the previous actions, and charging Messrs. Vanderspar and Mr. Tonks' assistant, Mr. Hislop, with having conspired to defraud the respondents of their property, and claiming Rs. 90,000 as damages, cancellation of the transfer to Messrs. Vanderspar and declaration of title and possession of the estate, and payment of the various sums the respondents had unsuccessfully claimed in the previous actions, amounting to Rs. 45,244. This action is still pending.

With regard to the first of these actions, the consent decree in No. 34,263 had reserved the respondents' right, if any, to sue for re-payment of the amount of compensation, and the exercise of that privilege, however hopeless, cannot count against the respondents in this matter. The claim for interest on the purchase amount of the estate, in the second of these actions, is not unreasonable, because the purchasers had got the rents and profits pending the execution of the transfer. But, as regards the other actions, it is, to my mind, impossible not to regard them as vexatious. It is true that the respondents have paid the costs of the various unsuccessful actions. But the ability to spend money and to pay the costs of the opposite side does not make any difference, if the litigation is in fact vexatious. I do not therefore think that the English case *re Alexander Chaffers*,[1] in which the non-payment of the costs of the previous actions was noted as a point against the respondents, helps the respondents. Nor is the question dependent on the number of actions instituted, *re Jones*[2], nor upon any consideration whether there may not have been possible causes of action in some of the cases. As was observed in *re Alexander Chaffers* (*supra*) what we have to look at is the general character and result of the number of actions brought by the respondents. It is relevant also to note that, although the Ordinance applies, whether the previous actions were against the same person or against different persons, yet, where they were against the same persons, the remedy provided will be more readily applied, because in that case the element of intention and personal feeling is more pronounced. In the present instance the actions are either against Messrs. Vanderspar or Mr. Tonks, and all of them have reference to and spring from the action No. 34,263 brought for specific performance of the respondents' agreement to sell their interest in Mipitiyakande estate to Messrs. Vanderspar. The respondents have been ringing the changes over the consent decree in that action, and have in one shape or another asserted with increasing bitterness the same things again and again against Messrs. Vanderspar or against Mr. Tonks. In this connection

[1] *(1897) 76 L. T. 351.*

[2] *(1902) 18 T. L. R. 476.*

I may refer more particularly to the cases (5), (7), and (8) noted above. It is not practicable to describe in a mere summary the character of this litigation, but a perusal of the pleadings and proceedings in the various actions leave the distinct impression on my mind that the respondents may rightly be described as persons who have habitually and persistently indulged in vexatious civil legal proceedings. It is probable that the respondents feel a sense of grievance which will not allow them to accept the decision of any Court as final. But the Ordinance is intended to protect the possible objects of their attention from being harassed and vexed by actions due to such obsession, and the Courts of justice from being troubled with unnecessary and hopeless litigation.

In my opinion the respondents have brought themselves within the salutary provision of the Ordinance, and I would make the order applied for.