

1938

*Present : Hearne and Keuneman JJ.*LITTLE'S ORIENTAL BALM AND PHARMACEUTICAL,
LTD. v. P. P. SAIBO.

111—D. C. Colombo, 6,217.

*Stamping of pleadings—Value of action in plaint and damages agreed upon—
Defendant's counterclaim—Value for purposes of stamp duty—No
formal amendment of pleadings.*

Where the plaintiff in an action for the infringement of a trade mark and for an injunction valued his claim at Rs. 1,000 and the defendant counterclaimed a sum of Rs. 30,000 as damages for the wrongful issue of the injunction, and where the parties agreed at the trial that the damages either party would be entitled to claim in the event of success should be Rs. 6,000,—

Held, that to ascertain the value of plaintiff's action for purposes of stamping, the value of his claim in the plaint, and the value of the damages agreed upon must be aggregated.

Held, further, that the agreement formally recorded would be binding for the purpose of stamping although there was no formal amendment of pleadings.

Sinappoo v. Theivanai (39 N. L. R. 121) followed.

CASE referred to the Supreme Court by the Registrar on a question of stamps.

M. M. I. Kariapper (with him *C. S. Perera*), for defendant, appellant.

F. A. Hayley, K.C. (with him *C. X. Martyn*), for plaintiff, respondent.

S. J. C. Schokman, C.C., for Attorney-General.

Cur. adv. vult.

September 15, 1938. KEUNEMAN J.—

This matter has been referred to us by the Registrar to determine a question relating to stamps.

The action was in respect of an infringement of a Trade Mark. The plaintiff prayed for an injunction and an accounting of profits made by defendant by sales, &c., and delivery of documents and labels. No damages were claimed. The subject-matter of the action was valued at Rs. 1,000.

The defendant in his answer counterclaimed the sum of Rs. 30,000 as damages sustained by reason of the injunction issued against him.

On the authority of *Vellasampulle v. The Uplands Tea Estates of Ceylon, Ltd.*¹, all pleadings, documents, &c., were stamped according to the Rs. 30,000 class. That decision was to the effect that the stamped duty leviable was to be calculated upon the value of the claim in convention or reconvention, whichever happens to be the larger, and not on the aggregate amount of both the claims.

On December 20, 1937, during the framing of the issues Counsel for plaintiff moved to amend the prayer of his plaintiff by adding the words "and that the plaintiff be awarded damages". No objection was taken and the amendment was allowed. It is to be noted that the amount of the damages claimed did not appear in the amendment.

Immediately after an agreement was recorded as follows:—"It is agreed that in the event of the plaintiff succeeding in proving the infringement or the passing off, that the defendant be condemned to pay a sum of Rs. 6,000 as damages. Likewise it is agreed that if the defendant succeeds in proving that he is entitled to claim damages on account of the wrongful issue of the injunction he would be entitled to claim Rs. 6,000 as damages".

These amendments were not incorporated in the pleadings, but by the agreement recorded by the District Judge, the plaintiff was entitled thereafter to claim damages of Rs. 6,000 in the event of his succeeding, and also the defendant's claim of damages was reduced from Rs. 30,000 to Rs. 6,000 in the event of his proving his case.

It is contended that the Registrar need not consider this agreement for the purpose of stamping, and that the value of the case can only be varied by an amendment of the pleadings. Reliance is placed on *Perumal v. Terunnanse*². In that case it was held that where a plaintiff by reducing his claim by amendment of the plaintiff reduces the class of the case, the stamp duty payable on proceedings after such amendment is as on an action in the lower class.

This case however did not lay down the rule that such a result can only be achieved by the amendment of pleadings. I agree that amendment of pleadings is the most formal and appropriate method of varying a claim, and that it is advisable in cases such as the present to have the alterations embodied in the pleadings. But an agreement entered into by the parties and formally recorded by the District Judge would be binding in an action for all other purposes, and I do not see that it does not amount to an alteration of the claims of the parties, which would have effect on the question of stamping, equivalent to an amendment of the pleadings.

¹ 1 C. A. C. 108.

² 1 N. L. R. 213.

I accordingly hold that after the recording of the agreement the defendant's claim for damages was Rs. 6,000.

There is one further matter. Before he claimed damages the plaintiff valued his action at Rs. 1,000. Later by virtue of the amendment of pleadings and the recorded agreement he added a claim for damages of Rs. 6,000. On the authority of *Sinappoo v. Theivanai*¹, to ascertain the value of the plaintiff's action, these two claims must be aggregated, and the total value of the plaintiff's claim was accordingly Rs. 7,000. This amount is larger than the claim in reconvention now reduced to Rs. 6,000.

I hold that stamping should be on the footing of a suit for Rs. 7,000.

I do not think any other matter arises before us except the decision of the question referred. Any further action which may be necessary may be taken by the Registrar or by the parties.

HEARNE J.—I agree.
