Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice, and Mr. Justice Wendt.

1909.
May 5.

JALALDEEN *v.* THE MUNICIPAL COUNCIL OF COLOMBO.

C. R., Colombo, 9,088.

Municipal Councils' Ordinance (No. 7 of 1887)—Action to reduce rate—Amount of rate—Jurisdiction of Court of Requests—Ordinances Nos. 5 of 1867 and 12 of 1895.

A Court of Requests has no jurisdiction to entertain an action for the reduction of assessment rate on the annual value of any premises where such rate exceeds Rs. 100.

Bell v. The Colombo Municipal Council[1] over-ruled.

HUTCHINSON C.J.—Section 4 of Ordinance No. 12 of 1895 as to the jurisdiction of Courts of Requests cannot be applied, and was not intended to apply, to objections to assessments under Ordinance No. 7 of 1887.

THE plaintiff brought this action in the Court of Requests of Colombo to have the assessment rate on certain premises owned by him for the year 1908 reduced. The property was assessed at the annual value of Rs. 1,056, and the rate was fixed at Rs. 130·56.

The defendant Council pleaded that the Court had no jurisdiction to entertain the action. The Commissioner (M. S. Pinto, Esq.), although of opinion that the objection was a valid one, considered himself bound by the judgment of the Supreme Court in *Bell v. The Colombo Municipal Council*,[1] and over-ruled the objection.

The defendant Council appealed.

H. A. Jayewardene (with him *F. J. de Saram*), for the defendant, appellant.

A. St. V. Jayewardene (with him *E. H. Prins*), for the plaintiff, respondent.

Cur. adv. vult.

May 5, 1909. HUTCHINSON C.J.—

The first question for our decision is whether the Court of Requests had jurisdiction to try this case; and if that is answered in the affirmative, there is a further question, whether there is a right of appeal from the Court of Requests on the facts. These questions were, on the hearing of the appeal by Wendt J., reserved by him for the consideration of two Judges.

The plaintiff states that the defendant Council assessed his premises in Colombo for the year 1908 at the annual value of Rs. 1,056 for the purpose of lighting and water taxes, amounting in

[1] *(1901) 1 App. C. R. 27.*

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all to Rs. 130·56, which seems to mean that the amount of the rate on the assessment is Rs. 130·56. He objected to the assessment, and asked the Court of Requests to reduce it to Rs. 900. By section 141 of the Municipal Councils' Ordinance, No. 7 of 1887, any person aggrieved by the assessment or non-assessment of any premises may object to and appeal against it in the manner provided by Ordinance No. 5 of 1867. And by Ordinance No. 5 of 1867 any person so aggrieved may object to the assessment or non-assessment before the Court of Requests having jurisdiction in the place where the premises are situate if the amount of the rate on the annual value of the premises does not exceed £10, and before the District Court if the amount exceeds £10; "and 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." The amount of the rate of the present case exceeds £10 (*i.e.*, Rs. 100), so that, if the above-quoted enactment is still in force, the Court of Requests has not jurisdiction. The Commissioner, however, considering himself bound by the decision of Lawrie J. in *Bell v. The Colombo Municipal Council*,[1] though contrary to his own opinion, held that he had jurisdiction, because the enactment, so far as the limitation of value is concerned, has been impliedly repealed by section 4 of the Court of Requests Ordinance, No. 12 of 1895, which enacts that every Court of Requests shall have cognizance of "all actions in which the debt, damage, or demand shall not exceed Rs. 300." These proceedings in the Court of Requests are an "action" as defined in the Courts Ordinance and the Civil Procedure Code. And the "demand" in this action is that the assessment made by the defendant Council on the plaintiff's premises may be reduced. The only power to make that demand is that which is given by Ordinance No. 5 of 1867, the material words of which are quoted above. The jurisdiction of the Court under that Ordinance does not depend on the amount of the plaintiff's demand, but on the amount of the rate; it does not depend on the amount by which the objector claims that the assessment should be reduced or increased; if he only asks for it to be reduced by Rs. 50, or if he simply asks that it should be reduced or amended, the claim is still beyond the jurisdiction of the Court of Requests if the rate exceeds £10. If, then, we suppose that the Legislature by the enactment of 1895 intended that the jurisdiction in these cases should no longer depend on the amount of the rate, but should depend on the amount of the objector's "demand," we have to inquire what is really the amount of the demand in these cases. Is it the amount by which the objector asks that the assessment shall be altered, or, in case of non-assessment, the amount which he asks to have assessed?

[1] (*1901*) *4 App. C. R. 27.*

It may be said that he is not bound by the Ordinance of 1867 to state that amount; that he has the right simply to state that he objects to the assessment, and to require the Court to consider his objection and amend the assessment. But he is required by the Ordinance of 1887 to state in writing the grounds of his objection to the Chairman of the Council and to the person, if any, whose property has not been assessed; and the Court might require him to state in his plaint the amount by which he asks that it should be amended, if that is necessary in order to ascertain whether the Court has jurisdiction. But when he asks that an assessment of Rs. 1,056 should be reduced to Rs. 900, can it be said that his "demand" is for Rs. 156? I think not. He will not get Rs. 156 if he succeeds; he will get a reduction of his rate by about Rs. 20. In my opinion his demand is not for Rs. 156. Then, are we to say that the test of jurisdiction is now whether the amount by which, if the objection succeeds, the rate may be amended exceeds Rs. 300? If that is so, it will require a large reduction in the amount of the assessment —a reduction, according to the present rate, of between Rs. 2,000 and Rs. 3,000 to take the case out of the jurisdiction of the Court of Requests.

The Legislature and the draftsman of the Court of Requests Ordinance probably had not their attention specially directed to the Ordinances of 1867 and 1887. If they had, and if they had intended to enlarge the jurisdiction of Courts of Requests in cases of appeals from assessments, I think that they would have considered it necessary to expressly amend the Ordinance of 1867 so as to state what should be in future the test of jurisdiction in such cases.

In my opinion the enactment of section 4 of the Court of Requests Ordinance as to jurisdiction cannot be applied, and was not intended to apply, to objections to assessments under the Municipal Councils' Ordinance. If I am right, the Court of Requests had no jurisdiction in this case. The second question reserved for our decision does not arise, and the action should have been dismissed. I suggested during the argument that when the Legislature by Ordinance No. 27 of 1908 authorized the republication of Ordinance No. 5 of 1867 in the revised edition, and declared that that edition should be the only Statute Book of the Island, it expressly represented thereby that Ordinance No. 5 of 1867 is still in force as it is printed in the revised edition. That argument, however, would not help us much if we had to do with two contradictory or inconsistent enactments. But I do not think that in this case we have two such enactments.

WENDT J.—

When "The Police Ordinance, 1865," and "The Municipal Councils' Ordinance, 1865," authorized the levying of rates on lands for the maintenance of the police force, &c., no remedy was

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provided for landowners who considered themselves aggrieved by the assessment of their property. Two years later the Legislature, by Ordinance No. 5 of 1867, reciting the desirability of giving dissatisfied parties "the right to object to and appeal against" such assessment, enacted that "if any person shall be aggrieved by the assessment or non-assessment of any house, building, land, or tenement, it shall be lawful for him to object to such assessment or such non-assessment before the Court of Requests having jurisdiction in the place where such house, building, land, or tenement is situate, if the amount of the rate on the annual value of such house, building, land, or tenement does not exceed ten pounds, and to the District Court if such amount exceeds ten pounds; and 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." Section 141 of the present Municipal Councils' Ordinance (No. 7 of 1887), which repealed the older Ordinance, empowers the party aggrieved "to object to, and appeal against, such assessment or non-assessment in the manner provided by the Ordinance No. 5 of 1867." The Ordinance of 1867 created a new remedy, and prescribed in what tribunal that remedy should be pursued. In apportioning the cases between the Court of Requests and the District Court, it enacted that the objector should resort to the Court of Requests if the annual rate did not exceed £10 (now equivalent to Rs. 100), otherwise he should apply to the District Court. It is noticeable that the division did not depend upon the value involved in the claim (which is the principle upon which the determination of jurisdiction in ordinary cases depends), but upon the amount of the rate. The claim might be for a reduction of the assessment, which would involve a corresponding reduction of the rate by Rs. 5 only, yet if the rate was over Rs. 100, the proper Court was the District Court. Clearly, therefore, the assignment of jurisdiction between the two Courts did not proceed upon the principle applicable to ordinary actions, but was peculiar to the special procedure newly created. Then came in 1895 the Court of Requests Amendment Ordinance (No. 12 of 1895), which by section 4 repealed section 77 of the Courts Ordinance defining the general jurisdiction of Courts of Requests, and substituted a new definition empowering such Courts to take cognizance of all actions in which the debt, damage, or demand shall not exceed Rs. 300. It was argued that this new Ordinance impliedly repealed section 1 of the Ordinance of 1867 as being inconsistent with it, and it was suggested that section 1 should now be given effect to as if "Rs. 300" were substituted for "£10." I certainly think that cannot be done, because the Rs. 300 is mentioned as the limit of value involved in the action, while

the £10 was the limit of the rate. Nor do I think that the enactment of 1895 could be regarded as introducing into that of 1867 a new principle of ascertaining jurisdiction, viz., according to the value involved in the demand. It is more than probable that the draftsman of the Ordinance of 1895, and the Legislature in enacting it, had not their minds directed to the Ordinance of 1867 at all, and had no formulated intention in regard to it, but dealt with the general jurisdiction of the Court without regard to any particular class of cases expressly assigned to that Court or the District Court. Otherwise I should have expected definite specific reference to the older Statute. I cannot subscribe to the decision of Lawrie J. in *Bell v. The Colombo Municipal Council.*[1] I think that the Ordinance of 1867 created a new and special right, and prescribed a special procedure for enforcing it, and the Ordinance of 1895 cannot be held to have intended to leave the right untouched, but to alter the procedure, when it said not a word as to either. I may add that if the respondent's argument is sound, the Ordinance of 1867 was twice repealed before 1895 by the successive Ordinances defining the general Court of Requests jurisdiction, viz., No. 11 of 1868, section 81, and No. 1 of 1889, section 77, each of which empowered those Courts to entertain actions in which the demand did not exceed £10.

I hold that the Court of Requests had not jurisdiction to proceed with this action, and I would reverse the decree appealed from and dismiss the action with costs in both Courts.

Appeal allowed.

[1] *(1901) 4 App. C. R. 27.*