

1946

Present : Howard C.J.

HAMID, Appellant, and BADURDEEN, Respondent.

166—C. R. Matale, 7,428.

*Jurisdiction—Action to recover money—Claim for interest—Part of cause of action—Court of Requests.*

In an action to recover money a claim for interest is not something incidental to the cause of action but is part of the cause of action itself.

When the amount claimed together with interest up to the date of the plaint exceeds Rs. 300 the Court of Requests has no jurisdiction.

**A** PPEAL from a judgment of the Commissioner of Requests, Matale.

*Cyril E. S. Perera* (with him *E. A. G. de Silva*), for the plaintiff, appellant.

*H. W. Jayewardene*, for the defendant, respondent.

*Cur. adv. vult.*

February 1, 1946. HOWARD C.J.—

The plaintiff appeals from a judgment of the Commissioner of Requests, Matale, dismissing his action on the ground that the claim was not within the jurisdiction of the Court of Requests. In his plaint the plaintiff claimed an order for the return of certain articles of jewellery on payment of the sum of Rs. 231. In the alternative he claimed judgment against the defendant for the sum of Rs. 269, that is to say, the value of the said articles Rs. 500 less the sum of Rs. 231. It would appear from the evidence which was accepted by the Commissioner that the plaintiff on August 16, 1939, deposited the jewellery with the defendant as security for a loan of Rs. 231. In holding that he has no jurisdiction the Commissioner relying on the judgment of Wood Renton J. in *Caro v. Arolis*<sup>1</sup> held that the test of jurisdiction is the amount demanded and not the amount awarded. He has further held that the value given by the plaintiff in his plaint must always be taken to determine the forum except in cases where the plaintiff has misrepresented the value with the intention of getting a trial in a different Court from that intended by the Legislature.

The jurisdiction of the Court of Requests is formulated in section 75 of the Courts Ordinance (Cap. 6) which is worded as follows :—

“ Every Court of Requests shall be a Court of record and shall have original jurisdiction, and shall have cognizance of and full power to hear and determine all actions in which the debt, damage, or demand shall not exceed three hundred rupees, and in which the party or parties defendant shall be resident within the jurisdiction of such court, or in which the cause of action shall have arisen within such jurisdiction, and all hypothecary actions in which the amount claimed shall not exceed three hundred rupees, and the land hypothecated or any part thereof is situated within the jurisdiction of such Court, and also all actions in which the title to, interest in, or right to the possession of any land shall be in dispute, and all actions for the partition or sale of land, provided that the value of the land or the particular share, right, or interest in dispute or to be partitioned or sold shall not exceed three hundred rupees, and the same or any part thereof is situate within the jurisdiction of such Court :

Provided always that such Court shall not have cognizance of any action for criminal conversation, or for seduction, or for breach of promise of marriage, or for separation *a mensa et thoro*, or for a divorce *a vinculo matrimonii*, or for declaration of nullity of marriage.”

The only question that arises is whether the Commissioner was right in holding that the debt, damage or demand exceeded Rs. 300. In addition to the cases cited to me by Counsel I have also considered the cases of *Thaynappa Chetty v. Packier Bawa*<sup>2</sup>, *Areppin Ahamat v. T. D. Martinus*<sup>3</sup>, and *Maclachlan v. Maitland*<sup>4</sup>. In the first case the action was brought in the District Court and the amount due on the day of the libel was £10. The libel in regular form claimed further interest till payment in full. This further claim raised the amount for which the plaintiff got

<sup>1</sup> 10 N. L. R. 173

<sup>2</sup> *Ramanathan's Reports 1863-1868, 216.*

<sup>3</sup> *Wend's Reports 341.*

<sup>4</sup> 8 *Supreme Court Circular 133.*

judgment to a sum exceeding £10. Creasy C.J. giving the judgment of the Full Bench held that in construing Court of Requests' Acts and Ordinances as to jurisdiction, it is the amount which the plaintiff has judgment to recover that determines whether the action was within the jurisdiction of the inferior Court. The action was therefore properly instituted in the District Court and was not within the jurisdiction of the Court of Requests. In the second case it was held by Burnside C.J. and Clarence J. that an action to recover Rs. 100 and interest thereon must be brought in the District Court and that a judgment giving plaintiff Rs. 100 and interest on Rs. 100 at 9 per cent. per annum from the institution of the action to the date of the judgment is a judgment for more than Rs. 100 and therefore the Court of Requests had no jurisdiction. In *Maclachlan v. Mailland* (*supra*) the headnote was as follows :

“ In an action brought against an hotel-keeper for the loss of goods stolen from the plaintiff's bedroom whilst a guest of the hotel, the plaintiff claimed Rs. 162·50 as damages. From this sum he set off a sum of Rs. 37·30 as due to the hotel-keeper for his board, and waiving a further sum of Rs. 25·20, he prayed that the balance sum of Rs. 100 might be decreed to him as damages, after deducting the debt due from him to the hotel-keeper, together with interest thereon at nine per cent. from the institution of the suit.

*Held*, per Dias A.C.J., that the plaintiff's action was well laid in the Court of Requests, as it was substantially an action to recover Rs. 100 as damages due at the date of the filing of the plaint, with interest thereafter at nine per cent.”

These three decisions cannot be reconciled. In *Maclachlan v. Mailland* (*supra*), Dias A.C.J. held that, if the actual amount claimed as due at the date of action was within the jurisdiction, the interest accrued after the date of plaint was a mere incident connected with the debt and had nothing to do with the question of jurisdiction. This decision was the exact opposite to the decision in *Areppin Ahamat v. T. D. Martinus* (*supra*). In *Thaynappa Chetty v. Packier Barwa* (*supra*), however, the Full Bench decided that interest is not something merely incidental to the cause of action and to the process of action, as costs are, but it forms part of the cause of action itself. Reference was made by Creasy C.J. in the course of his judgment to *Baddely v. Oliver*<sup>1</sup> and to a dictum of Mr. Justice Byles in *Byles on Bills* p. 264, 7th edition where the latter said “ interest is in the nature of damages for the retention of the principal debt.” The decision in *Thaynappa Chetty v. Packier Barwa* (*supra*) was cited with approval by De Sampayo J. in *Banda v. Menika*<sup>2</sup> in so far as that it related to an action for the recovery of “ a debt, damage or demand ”, that is to say of the character declared in the first part of section 75 of the Courts Ordinance. *Banda v. Menika* (*supra*) was the decision of a Full Bench. Again in *Pedris v. Mohideen*<sup>3</sup>, another Full Bench decision, Schneider J. at pp. 110–111 stated as follows : “ although section 77 limits the jurisdiction in actions for debt, damage or demand, no such limitation is imposed as regards the damages which may be claimed in actions for recovery of possession.”

<sup>1</sup> 1 C. & M. 219.

<sup>2</sup> 21 N. L. R. at p 282.

<sup>3</sup> 25 N. L. R. 105.

In the present case the plaintiff claims the return of articles of jewellery on payment of the sum of Rs. 231 or in the alternative judgment for the sum of Rs. 269, being the value of the articles which for the purpose of this alternative claim are assessed at Rs. 500 less Rs. 231, together with legal interest from date of plaint till payment thereof. In evidence the plaintiff states that the value of the jewellery is Rs. 735. So in his first demand the plaintiff is claiming the return of articles valued at Rs. 735 on payment of Rs. 231. This demand is clearly outside the jurisdiction of the Court. In the alternative claim the plaintiff asks for the value of the articles which for this purpose he assesses at Rs. 500 less Rs. 231 or Rs. 269 and legal interest on this sum until payment. As the plaint was issued on October 6, 1942, interest is claimed for over 3 years. This interest will bring the demand to a sum exceeding Rs. 300 which in view of the Full Bench decisions cited is outside the jurisdiction of the Court of Requests.

For the reasons I have given I am of opinion that the Commissioner came to a correct conclusion and the appeal is dismissed with costs.

*Appeal dismissed.*

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