

1947

Present: Canekeratne and Dias J.

THE ATTORNEY-GENERAL, Appellant, and MACKIE, Respondent.

S. C. 30—D. C. Colombo, 71 T.

Estate Duty Ordinance—Petition of Appeal—Order to file Statement of Objections—Powers of Court—Section 40—Chapter 187.

On the filing of a petition of appeal under section 40 of the Estate Duty Ordinance the District Judge ordered the Attorney-General to file a statement of objections with the following directions "I accordingly call upon the Attorney-General to file a statement setting out the basis of the Commissioner of Estate Duty's assessment giving details under such heads as goodwill, depreciation, &c. He may at the same time refer to any questions of fact or law raised in the petition of appeal or on which he proposes to rely".

Held, that the directions contained in the order were *ultra vires*. A Court should not dictate to parties how they should frame their case.

A PPEAL from a judgment of the District Judge, Colombo.

H. H. Basnayake, K.C., Acting Attorney-General (with him *H. Deheragoda, C.C.*), for the Crown, appellant.

F. A. Hayley, K.C. (with him *S. J. Kadirgamer*), for the petitioner, respondent.

Cur. adv. vult.

September 15, 1947. CANEKERATNE J.—

The Executors of the Last Will and Testament of C. W. Mackie, deceased, delivered a declaration of property passing on his death to the Commissioner of Estate Duty. An Assessor issued a notice of assessment fixing the net value of the estate in Ceylon at Rs. 2,918,141. The Executors as persons aggrieved by the decision of the Assessor had a right of appeal to the District Court of Colombo; so they followed the procedure prescribed by the Ordinance. A specific statement of the grounds of appeal was delivered to the Commissioner within 30 days after the date of the notice of assessment. As the Commissioner maintained the decision on one matter, namely, on the valuation placed on the Cumulative Preference Shares Rs. 828,090 as against Rs. 806,017 the valuation of the Executors and did not withdraw his claim in respect of another but varied the decision thereon by reducing the valuation of the Management Shares from Rs. 300 a share to Rs. 250 as against Rs. 30 the valuation of the Executors, they within 30 days decided to proceed with their appeal by filing a petition to the District Court. A copy of the petition was served on the Attorney-General, the respondent to the petition. The appellants may only rely on their petition, and at the hearing of the grounds contained in this original statement (petition of appeal—section 39): a Court, however, can give leave to amend the petition (section 41). On July 18, 1946, the respondent's proxy was filed in Court and the petition was set down for hearing on October 25, 1946. When the matter came on for inquiry on this day, Counsel for the Executors contended that the respondent should set out his objections to the method of valuation adopted by them and state which was the

correct method of valuation. The further consideration of this matter was taken up on November 21, 1946. Thereafter the Judge made an order to this effect:—"I accordingly call upon the Attorney-General to file a statement setting out the basis of the Commissioner of Estate Duty's assessment giving details under such heads as goodwill, depreciation, &c. He may at the same time refer to any questions of fact or law raised in the petition of appeal or on which he proposes to rely".

The petitioners, on June 15, made an application to the Court for relief. Such application may be considered an action under the Code of Civil Procedure (Ch. 86, C. L. E. section 6). The procedure, however, in a proceeding of this kind differs materially from that which would prevail in an ordinary action in regular procedure under the Code, for there the person against whom the application is made is called upon formally to state his answer to the case alleged against him. Only after the answer is filed is the matter in issue between the parties. A plaintiff's pleading is his plaint, a defendant's pleading is his answer: a statement filed after the answer, such as a replication is also a pleading¹. No pleadings after answer can be filed except where there is a claim in reconvention or except by order of Court made before the day appointed for the hearing of the action². The whole object of pleadings is to bring the parties to an issue. All necessary particulars are sometimes not embodied in the pleadings: where this has not been properly done Courts in some places have a wide power to order particulars to be given. Particulars then supplement pleadings which would otherwise be too vague and general, and ensure a fair trial by informing the opposite party what case he has to meet. In Ceylon the power to order particulars is not so wide³.

The distinction between particulars and evidence must be steadfastly kept in mind. Particulars, however, are not ordered of the mode in which it may be proposed to prove the case set up in the pleading. From the nature of the case the occasion for particulars arises somewhat less frequently in regard to defences than in regard to claims. Where a defence consists of traverses or denials of allegations in the claim, the occasion for particulars does not arise; but where a defendant pleads affirmatively or sets up facts to be proved in answer to the plaintiff's case, as where he sets up a defence of payment, he may be, and in general is as much under an obligation to give particulars as if he were alleging such or similar matters in a plaint.

It is necessary to consider section 40 of the Estate Duty Ordinance. Though there may be an action between the Executors as plaintiffs and the Attorney-General as defendant all the provisions in the Code relating to pleadings are not applicable. The attorney-General is under no obligation to file a statement in answer to the petition of the appellants. But a Court is given power to make a special order. If the Court is of opinion that in any particular case it is necessary to have some other pleading before it, it can make an order to that effect. A Court may

¹ Sections 39, 72, 75, of the Code (Ch. 86).

Cf. Emalishamy v. Kannangara (1904) 1 Bal. 11—plaint and answer referred to as pleadings. Order vi. r. 1 of the Indian Code of Civil Procedure.

² Section 79 of the Code (Ch. 86).

³ Section 40 (d) section 46, a, b,—see 2 C. L. R. 35; 2 Bal. N. C. 28.

more readily listen to an application made by the respondent for permission to file a statement than to one made by the petitioner with the object of getting the other party to file a statement for in the latter case the burden is on the petitioner to show that it is necessary in the circumstances of the case that such an order be made. On July 18, the matter would ordinarily be deemed at issue between the parties. There would then only have been the petition filed by the appellants before the Court. The Executors when they filed their petition were aware of the valuation placed on the disputed items by the Commissioner. Their position was that these valuations were excessive. They were apparently aware of the grounds on which the Commissioner appears to have proceeded, for they state how the Management Shares should be valued in terms of section 20 (1) of the Ordinance, that the provisions of sub-section (6) of section 20 are inapplicable and that goodwill must not be taken into consideration.

The reason given by the Judge for allowing the application is a mistaken one in that it does not take account of the full facts of the case. The question is not whether it is desirable to get the details so as to confine "the proceedings to manageable proportions" (p. 8 of the record) but whether the Judge had power to order these details to be given. This is an attempt to impose a burden on the respondent which is not warranted by the language of the section. The rule that the Court should not dictate to parties how they should frame their case is one that ought always to be preserved sacred.

The next question is whether this Court should mould the order of the Judge and limit it to only so much as is well founded. I think it a fair view to make an order to the effect that the respondent should file a statement by way of answer.

The order of the trial Judge made on November 28, 1946, is set aside: the costs of appeal and of the inquiry will be costs in the cause.

DIAS J.—I agree.

Order set aside.

