

**ORIGINAL CIVIL.**

*Before Mr. Justice Fletcher.*

KESRI CHAND

*v.*

NATIONAL JUTE MILLS Co.\*

1912

June 17.

*Practice—Evidence—Defendant's right to offer evidence.*

Where the defendant appears and the plaintiff does not appear or offers no evidence when a suit is called on for hearing, the Court has no jurisdiction except to dismiss the suit for want of prosecution: the defendant is not entitled to have his evidence heard before the suit is dismissed.

*Ex parte Jacobson* (1) distinguished.

ORIGINAL SUIT.

This action was brought by the plaintiff against the National Jute Mills Co., Ltd., and Messrs. Andrew Yule & Co., who were the managing agents both of the National Jute Mills Co. and of the New Zealand Insurance Co., a foreign company having no registered office in British India.

It was alleged by the plaintiff that he was induced by the representations of one Mr. J. H. Manning-Fox, who was then the head of the insurance department of Messrs. Andrew Yule & Co., to enter into transactions of the following nature: the plaintiff was to purchase from time to time quantities of salvaged jute from the insurance agencies of Messrs. Andrew Yule & Co., and to sell the same at a higher rate through the mills department of Messrs. Andrew

\* Ordinary Original Civil Suit No. 697 of 1911.

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Yule & Co., Mr. Manning-Fox undertaking to give delivery direct to the purchasing mills. From June 1909 to March 1911 the plaintiff entered into numerous transactions of this nature, obtaining receipts for payments made in respect of their purchases, receipts for jute delivered in respect of their sales, and full payment for the jute so sold and delivered. In March 1911 the plaintiff purchased three lots of jute for the sum of Rs. 2,42,000 from Messrs. Andrew Yule & Co., as agents of the New Zealand Insurance Co., and paid for the same in full, and was granted receipts signed by J. H. Manning-Fox for Messrs. Andrew Yule & Co. as managing agents of the New Zealand Insurance Co. These three lots of jute were sold to the National Jute Mills Co., Ltd., for the sum of Rs. 2,69,750, and the plaintiff obtained receipts for the delivery of the jute purporting to be signed by the mill-manager of the National Jute Mills Co. The plaintiff applied for payment to Messrs. Andrew Yule & Co. as agents of the National Jute Mills Co.: thereupon Messrs. Andrew Yule & Co. repudiated the transactions, and stated that neither the New Zealand Insurance Co. nor the National Jute Mills Co., Ltd., had ever entered into the transactions suggested by the plaintiff, and subsequently after inspection of the receipts they denounced them as false and fabricated.

Thereupon the plaintiff brought this action, claiming the sum of Rs. 2,69,750 from the National Jute Mills Co., Ltd., and Messrs. Andrew Yule & Co., and in the alternative the sum of Rs. 2,42,000 or jute of equivalent value from Messrs. Andrew Yule & Co.

It was contended by the plaintiff that Messrs. Andrew Yule & Co. were bound by the acts and representations of Mr. Manning-Fox and their manager of the mills department.

The National Jute Mills Co. and Messrs. Andrew Yule & Co. filed separate written statements. Shortly their defence was that no such jute had ever been sold by the New Zealand Insurance Co. to the plaintiff, nor purchased by the National Jute Mills Co., Ltd., from the plaintiff, and that the plaintiff deliberately entered into a fraudulent conspiracy with Mr. Manning-Fox for the purpose of cheating and defrauding the defendants and the New Zealand Insurance Co.

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When the suit came on for hearing, the plaintiff was not represented by counsel, and, in reply to an enquiry made by the Court, the plaintiff's attorney stated that he had not instructed counsel.

*Mr. Jackson* (with him *Mr. W. Gregory* and *Mr. Langford James*), for Messrs. Andrew Yule & Co. I am anxious to call my evidence. The suit being dismissed for default, may lead to insinuations and suggestions, or there may be an application for its restoration. Issues have been framed on a previous occasion. The defendant is entitled to have evidence given, even though the Court is prepared to decide in his favour: *Ex parte Jacobson* (1). The Civil Procedure Code does not differ from the English Judicature Acts which do not prevent such evidence being given.

*Mr. Norton* (with him *Mr. Pugh* and *Mr. Pearson*), for the National Jute Mills Co. Ltd., made a similar application.

FLETCHER J. There is nothing to say in this suit. The plaintiff does not appear, and *Mr. Jackson* and *Mr. Norton* on behalf of the defendants say that they wish to open their case. That is a procedure which is not contemplated by the Code of Civil Procedure.

(1) (1882) L. R. 22 Ch. 312.

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The decision of Sir George Jessel in *Ex parte Jacobson* (1) does not apply to this case at all. That case was that when the Master had heard the evidence given on behalf of the plaintiff, he said he was prepared to decide on the defendant's side without calling for any evidence to be given for or on behalf of the defendants. That of course is a position which the defendant is not bound to take up. Under our Code, notwithstanding that at the close of the plaintiff's case the Judge has formed an opinion in favour of the defendant, the defendant can say that he is entitled to give evidence in proof of the case he has made in his own written statement; so that in the case of an appeal there may be no remand, but the whole case may be disposed of. This is not a case where the plaintiff offers evidence. When the plaintiff offers no evidence, the Court has no jurisdiction except to dismiss the suit for want of prosecution. This case must be dealt with on that footing. The plaintiff must pay to the defendant the costs of this suit and of the commission to England, on scale No. 2.

Attorneys for the plaintiff: *Fox & Mandal.*

Attorneys for the defendants: *Leslie & Hinds.*

J. C.

(1) (1882) L. R. 22 Ch. D. 312, 314.