1880

BROJOMOHUN DOSS v. HURROLOLL DOSS.

thought proper to allege as wrong, by not setting forth those circumstances which are necessary to make it so."

We observe that in this case the defendant, by his written statement, has expressed his readiness to account; but we think that, in a case like the present, the plaintiffs are not entitled to pick out passages from the defendant's written statement to supplement the weakness of the case made by themselves. And as in our opinion the plaintiffs have failed to allege a sufficient case for the interference of the Court, we must affirm the decision of the Court below, and dismiss the appeal with costs. But we do so without prejudice to the institution of any properly constituted suit against the defendant, leave to institute which we reserve, if it is necessary to do so.

Appeal dismissed.

Attorney for the appellants: Baboo *Mohendronath Bonnerjee.*

Attorneys for the respondent: Messrs. *Pittar* and *Wheeler.*

Before Mr. Justice Wilson.

SHAM KISHORE MUNDLE v. SHOSHIBHOOSUN BISWAS.

1880 *Jany.* 29.

Practice—Code of Civil Procedure (Act X of 1877), ss. 121, 125, 127, 136—Ex parte Order—Order giving leave to interrogate—Interrogatories, Application to strike out.

Section 121 of the Code of Civil Procedure contemplates (1) leave to interrogate and (2) the service of the interrogatories through the Court. It is the duty of the Court under that section to determine whether the applicant should be allowed to interrogate the other side, but not to determine at that stage what questions the party interrogated should be compelled to answer.

Where an *ex parte* order is made in chambers giving leave to interrogate, the party ordered to answer has a right to come into Court to have the order set aside if the case is one *in which interrogatories* should not have been allowed.

When an order for the administration of interrogatories is properly made, a party objecting to the interrogatories administered may, at his peril, omit to answer the interrogatories to which he objects; but the more prudent

1880

SHAM KISHORE MUNDLE v. SROSHI-BHOOSUN BISWAS.

course is to file his affidavit in answer, stating in it his objections to answer such questions as he objects to.

Where interrogatories are scandalous, or in any way an abuse of the process of the Court, the Court may interfere at any stage.

The powers given to the Court by s. 36 should not be exercised except in extreme cases.

THIS was an application on the part of the defendant for an order that certain "interrogatories administered by the plaintiff for the examination of the defendant be recalled." The affidavit in support of the application stated that the suit, which was for money due on a promissory note executed by one Greendorbhoosun Biswas (since deceased), was instituted against the latter on the 9th of April 1879, under chap. xxxix of the Code of Civil Procedure; that, on the 24th of July, the defendant obtained leave to appear and defend the suit as the executor of Greendorbhoosun; and that, on the 22nd day of December 1879, interrogatories for the examination of the defendant were delivered by the plaintiff. The defendant objected to answer the interrogatories on the ground that they related to matters of cross-examination merely.

Mr. *Bonnerjee* for the defendant asked, that the order allowing the plaintiff to interrogate the defendant be recalled and the interrogatories struck out, on the ground that they related merely to matters of cross-examination. He contended that the order was granted *ex parte*, and might therefore be recalled by the Court if found, on examination, to be an improper one.

Mr. *O'Kinealy* for the plaintiff objected that the application was irregular; that the proper course for the defendant was to make an affidavit under s. 125 of the Code of Civil Procedure, leaving the plaintiff to come in under s. 127. The defendant had in fact pursued that course, and objected to the interrogatories, on a ground which was clearly untenable, as it admitted their relevancy.

The following judgment was delivered by

WILSON, J.—There is no doubt that the practice should be settled, because the procedure is new, and it is very important

that there should be a settled practice. I do not entertain any doubt as to what practice is most convenient and most in accordance with the Civil Procedure Code.

The first section of the Code which deals with interrogatories is s. 121, which says:—"Any party may, at any time, by leave of the Court, deliver through the Court interrogatories in writing for the examination of the opposite party." Now what that section contemplate is, I think, first, leave to interrogate; and secondly, the service of the interrogatories through the Court. Following on that section, we have a rule of Court which makes the matter a little more clear. That rule is as follows:—"When interrogatories are ordered by the Court to be delivered under s. 121 of the Code of Civil Procedure, two copies of each set of interrogatories shall be tendered to the Registrar, who, when the same are tendered by the plaintiff, shall forthwith, or when the same are tendered by the defendant, shall, on being satisfied that the defendant has filed a written statement, retain and file one of such copies and deliver the other copy for service to the attorney of the party tendering the interrogatories, or if there be no attorney, to the sheriff, after adding at the foot thereof his signature and official designation, after the words 'Let this be served by the plaintiff's attorney [*or* the defendant's attorney, *or* the sheriff, as the case may be']" (1).

Now I think that the section and the rule together clearly contemplate that it is the duty of the Court to determine whether the applicant should be allowed to interrogate the other side, but not to determine at that stage, what questions the party to be interrogated should be compelled to answer. In the present case that procedure seems to have been followed. Leave to interrogate was granted to the plaintiff. The order was, "that the plaintiff be allowed to interrogate." In future, I think these applications should be made in chambers by petition, like other applications, and the order should be, "that the applicant be at liberty to interrogate."

I think Mr. Bonnerjee is right when he says that the order stands on the same footing as any other order made in chambers

(1) Rule 274, Belchambers's Rules and Orders, p. 152.

1880

SHAM KISHORE MUNDLE v. SHOSHI-BHOOSUN BISWAS.

on *ex parte* applications, and that the parties have a right to come into Court and ask that the order be reconsidered, and, if found to have been wrong, set aside. Therefore, if an order is made giving leave to interrogate, the party ordered to answer has a right to come into Court to have the order set aside, if the case is one in which interrogatories ought not to have been allowed. If the order was not wrong, and the case was a proper one for the administration of interrogatories, then other courses are open to a party objecting to the interrogatories administered. If the interrogatories are scandalous, or in any way an abuse of the process of the Court, the Court, no doubt, may interfere at any stage. In other cases the party interrogated might omit to answer the interrogatories to which he objects, at his peril. Then the course is for the interrogating party to apply to the Court under s. 127 for an order requiring the other party to answer, or to answer further, either by affidavit or by *viva voce* examination, as the Judge may direct; or the party interrogated may take a more cautious course; he may file his affidavit in answer, stating in it his objections to answer such questions as he objects to: and in this case the interrogating party, if dissatisfied, can apply under s. 127.

Section 36 has been referred to, but I have no doubt the Court will not exercise the powers there given except in extreme cases.

It follows that, in my judgment, the proper course is, that if the defendant in this case desires to object to any of the interrogatories, he may abstain from answering or state his objections in his affidavit. If he does so object, then the plaintiff may take steps under s. 127 to compel him to answer. The present application to disallow the questions is in my opinion wrong.

Attorney for the plaintiff: Baboo *Aushootosh Dhur.*

Attorney for the defendant: Baboo *Mooraly Dhur Sen.*