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it appears to us that the defendants have not been able to show that, at the time when the first suit was brought, that is to say, on the 7th October 1871, the plaintiffs had any cause of action in respect of this money as against them. That being so, and it being also admitted that the money was really drawn from the Collector's office after the institution of that suit, we do not think that there is any force in this objection.

These are all the objections taken by the defendants to the plaintiffs' claim, and as it appears to us that the title of the plaintiffs in respect of this money cannot now be disputed, the plaintiffs are entitled to a decree. We, accordingly, reverse the decrees of the lower Courts, and direct that a decree be given to the plaintiffs for the money claimed with costs in all the Courts.

Appeal allowed.

ORIGINAL CIVIL.

Before Mr. Justice Wilson.

SHIBKRISTO SIRCAR v. ABDOOL HAKHEEM.

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 Dec. 19.

Practice—Amendment of Plaintiff—Alternative Relief—Frame of Suit—Account and Discovery.

After parties have come to trial to determine which of two stories is true, the plaintiff cannot be allowed to amend his plaint by abandoning his own story, and adopting that of the defendant, and asking relief on that footing: for the question, whether on that footing the plaintiff is entitled to relief, is one to which the defendant's attention has not been called, and as to which he has had no opportunity of answering.

In a suit to recover a specified sum for the hire of cargo boats and not asking for any other relief, the defendant alleged and proved, that he was merely the agent of the plaintiff to find hirers for the boats, and that he was not liable for the hire of the boats.

Held, that although *prima facie* a principal is entitled to an account and discovery from his agent, the plaintiff could not obtain such relief in the suit as framed, and that he could not, after coming to a hearing, be allowed to amend his plaint by inserting an alternative prayer for relief, upon the footing of the case set up by the defendant.

THIS was a suit to recover the sum of Rs. 3,121-10-8 for the hire of cargo boats, and the plaintiff prayed judgment for this sum only, without asking for any other relief. The defendant, in his written statement, alleged, that he was a Ghat Manjee, and was employed by the plaintiff in that capacity, and that it was his duty to procure hirers for the plaintiff's boats and to recover the amount of the bills for the hire of such boats from the hirers when asked to do so, and that, in the performance of such duty, he acted merely as the plaintiff's agent, and was in no way responsible for the hire of the boats. The defendant admitted that, on certain occasions, he had hired boats from the plaintiff on his own account, but stated that he had paid the plaintiff the full amount owing to him for such hiring. Upon hearing the evidence the learned Judge came to the conclusion that the defendant's contention was correct, and that the defendant was not liable for the hire of the boats. The plaintiff then contended that he was entitled to an account and discovery against the defendant as his agent, and asked leave to amend his plaint by adding a prayer for such relief.

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Mr. *T. A. Apcar* and Mr. *Mitter* for the plaintiff.

Mr. *Kennedy* and Mr. *Bonnerjee* for the defendant.

Mr. *Apcar*.—Upon the facts stated in the plaint and written statement, the true question at issue can be tried. The object of the plaint is merely to bring the matter in dispute before the Court, but it is for the Court, upon the statement before it, to determine the real issue between the parties—*Arbutnot v. Betts* (1). [WILSON, J.—In that case the plaintiffs, whether they acted as agents, or were the actual vendors, were entitled to recover the price of the goods sold, and the form of the plaint made no difference as regarded the substantial defence in the case. The case of *Eshenokunder Singh v. Shamachurn Bhutto* (2) decides that the plaintiff is bound by the facts stated in his pleadings.] The Court has power to amend the plaint at any stage of the case: Act X of 1877, s. 53. Even if a plaintiff has not put forward an alternative case in his plaint, he may

(1) 6 B. L. R., 273.

(2) 11 Moore's I. A., 7.

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have leave to amend his plaint, and state his case correctly therein, if the Court think that he has rested his claim upon wrong grounds from misinformation, ignorance of law or fact, mistake or misconstruction of documents—*Lakshmi Bai v. Hari bin Ravji* (1). [WILSON, J.—The plaintiff might have applied to amend his plaint after he became aware of the case set up by the defendant; it is too late now to ask for amendment.]

Mr. Kennedy.—The case of *Eshenchunder Singh v. Shamachurn Bhutto* (2) decides, that “the determinations in a cause should be founded on a case either to be found in the pleadings, or involved in, or consistent with, the case thereby made;” and that “the state of facts, and the equities and ground of relief originally alleged and pleaded by the plaintiff, are not to be departed from.” That rule was followed in *Lukhee Kanto Dass Chowdhry v. Sumeeruddi Lusker* (3). In *Deniston v. Little* (4) Lord Redesdale said: “I know of no case which allows an amendment in order to enable the party to make a new case. Here the plaintiff has brought his cause to a hearing, attempted to controvert the agreement as stated in the answer, and failing in that attempt, now desires to amend his bill and seek performance of that agreement. I think this would be mischievous, especially under such circumstances as those of the present case; and I think I ought to dispose of this bill with a view to the general practice of the Court, and to compel parties who come for the execution of agreements, to state them as they ought to be stated and not to set up titles which, when the cause comes to a hearing, they cannot support.”

WILSON, J.—The case of the plaintiff as set out in his plaint is, that the defendant hired cargo boats of him, and that a balance of Rs. 3,121 is due to him on that account. He prays judgment for this sum without any other prayer for relief. The defendant's case, as set out in his written statement, is, that he was not the hirer of the plaintiff's boats, but was only employed as an agent to find hirers for them, except in the case of certain boats for which he had paid.

(1) 9 Bom. H. C. Rep., 1.

(2) 11 Moore's I. A., 7.

(3) 13 B. L. R., 243.

(4) 2 Sch. & Lef. 11 (a.)

I have come to the conclusion, on the whole of the evidence, that the defendant's version is the true one, and that the plaintiff cannot recover against the defendant as the hirer of his boats.

It was said, however, for the plaintiff that, even on the defendant's own account of the facts, he was entitled to account and discovery. *Prima facie*, no doubt, a principal is entitled to such relief against his agent. But I think it clear that the plaintiff cannot have such relief in this suit as at present framed. I cannot give him relief for which he has not asked, on the ground of a state of facts the contrary of that which he has asserted.

It was said, however, that the plaintiff might be allowed to amend his plaint to meet this view of the case. I think, however, when the parties have come to trial to determine which of two stories is true, it would be a dangerous precedent to allow the plaintiff to amend, by abandoning his own story and adopting that of the defendant, and asking relief on that footing. The question whether on that footing the plaintiff is entitled to relief, is one to which in such case the defendant's attention has not been called, and as to which he has had no opportunity of answering. Nor would much have been gained by amending, for it could only have been on the terms of the plaintiff's paying all the costs of the suit.

Suit dismissed with costs.

Attorney for the plaintiff: Baboo Nobin Chunder Bural.

Attorney for the defendant: Baboo Gonesh Chunder Chunder.

INSOLVENCY.

Before Mr. Justice Broughton.

IN RE HURRUCK CHUND GOLICHA.

Insolvency Adjudication—Gomashta—Trader beyond Jurisdiction carrying on business by a Gomashta within Jurisdiction—Practice—Affidavit, time for filing—Stat. 11 and 12 Vict., c. 21, s. 9.

A trader, residing out of the jurisdiction of the High Court, but carrying on business at Calcutta by a gomashta, can be adjudicated an insolvent under 9 of 11 and 12 Vict., c. 21, if his gomashta stops payment and closes and

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