

ORIGINAL CIVIL.

Before Mr. Justice Pigot.

KHAJAH ASSENOOLLA JOO v. KHAJAH ABDOOL AZIZ AND OTHERS.

1883
July 23.*Practice—Civil Procedure Code (Act XIV of 1882) s. 136—Non-compliance with order for production of Documents—Defence struck out.*

Where a defendant neglects to comply with an order for production and inspection, the Court will, although in the last resort, order his defence to be struck out,

THIS was a suit praying that the first defendant might be ordered to bring into Court probate of an alleged will of one Khajah Golam Moheooddeen (deceased) to try the factum and validity thereof, and for a declaration that the plaintiff was entitled to a share in the estate of the deceased and for an injunction.

The defendant entered appearance and filed his written statement on the 11th December 1882. On the 8th January 1883 the usual order for production of documents was made, and the same was served on the 12th January on the defendant's attorneys.

The defendant on the 18th January filed his affidavit verifying a list of documents in his possession. The plaintiff experiencing difficulty in obtaining proper inspection of the books produced, moved the Court, and on the 29th March 1883 obtained an order directing the defendant to produce and leave at the office of the Registrar within a certain period certain books and documents, amongst which were certain books in Cashmere relating to the years 1270 to 1277 (1863 to 1870), the plaintiff to have liberty to inspect and peruse the same.

The above order was served personally on the defendant as well as on his attorneys on the 27th April. On the 30th May the defendant produced certain books from Umritsur, and made them over to the Registrar, but the plaintiff was unable to obtain inspection of the same owing to the continued absence of the defendant. After a prolonged correspondence between the plaintiff's and defendant's attorneys on the matter, the former received on the 2nd July a letter from the latter saying that "you can inspect the Umritsur books in the Registry Office whenever you chose

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to make an appointment to do so; our client's inspection must be dispensed with." The Registrar, however, would not allow inspection until the defendant should have made a list of the documents. The defendant altogether failed to comply with the order of the 29th March, as regards the Cashmere books, the time for such production having long passed.

The plaintiff therefore applied to the Mr. Justice Norris in Chambers for a summons on the 17th July 1883, calling upon the defendant to appear in Chambers on the 20th July to show cause why he should not, within 48 hours from the order, comply with the order of the 29th March 1883 by leaving and producing the Cashmere books at the Registrar's Office, and why in default of his compliance therewith his defence should not be struck off.

The above summons was duly served on the defendant's attorneys, but the defendant put in no appearance as directed by the summons.

Thereupon the plaintiff applied in Chambers for an order in terms of the summons, and Mr. Justice Norris adjourned the matter into Court.

Mr. Hill for the plaintiff applied under s. 136 of the Code of Civil Procedure that the defendant's defence might be struck out, stating that he was not aware that any similar application had ever been made in this Court; the section was taken from the English Order XXXI, rule No. 20 of the Judicature Act, and having regard to the serious consequences to the defendant the Court would necessarily be reluctant to exercise the discretion conferred on it, except in extreme cases; see *Twyeroff v. Grant* (1), in which Lush, J., held that he would only exercise the powers conferred by the rule in the last resort; there, however, an explanation was offered for the non-compliance with the order, and it was said that the defendant was willing to answer the interrogatories within a week, whereas upon the affidavit now before the Court the defendant's whereabouts was unknown even to his attorney, and the latter was wholly uninstructed.

In England the party against whom such an order is made would, it seems, be entitled to come in and ask that the order

(1) W. N. for 1875, p. 201.

might be set aside on showing sufficient grounds for such an application; and in this case the order will not be very prejudicial to the defendant. 1883

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PIGOT, J., made an order striking out the defence of Khajuh Abdool Aziz under s. 136 of the Code in consequence of his non-compliance with the order of the 29th March 1883; and at the same time mentioned that the party against whom the order was made might come in and seek to set it aside on showing good grounds for the application. KHAIJAH
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Attorneys for the plaintiff: *Messrs. Remfry and Remfry.*

APPELLATE CIVIL.

Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Macpherson.

JUGUT SHOBHUN CHUNDER *alias* DOOLAL CHUNDER DEHINGUR GOSSAMY (PLAINTIFF) *v.* BINAUD CHUNDER *alias* SODA SHOBHUN CHUNDER DEHINGUR GOSSAMY AND ANOTHER (DEFENDANTS).*

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May 29.

Jurisdiction of Revenue Courts—Question of Title—Registration of names—Declaratory decrees, Suit for.

It is not the province of a Revenue Court to decide questions of title between contending claimants, such questions being within the province of the Civil Courts. It is the duty of the latter in suits brought for declaration of a right to registration to declare the rights of parties in order that the revenue authorities may be duly certified as to the persons whom they ought to register.

IN this case the plaintiff sued to get his name registered on the revenue rolls as a joint holder with his brother, defendant No. 1 in respect of 311 bighas of ancestral lands.

The plaintiff stated that after his father's death in 1277 (1870), he and his brother, defendant No. 1, inherited their father's estate; that at that time both of them were minors, and the lands in

* Appeal from Appellate Decree No. 1863 of 1881 against the decree of W. B. Ward, Esq., Judge of Assam Valley District, dated the 13th June 1881, reversing the decree of Baboo Shibo Persad Chuckerbutty, Sudder Munsiff of Gauhatty, dated the 14th December 1880.