APPELLATE CIVIL.

Before Mr. Justice Curgenven.

S. R. M. A. R. RAMANATHAN CHETTIAR (RESPONDENT), PETITIONER,

1931, August 26.

v.

THE HONOURABLE RAJAH SIR ANNAMALAI CHETTIAR (PETITIONER), RESPONDENT.*

Code of Civil Procedure (Act V of 1908), O. XI, rr. 15 and 18—Inspection—Right of—Documents relied upon by plaintiff as evidence in support of his claim—Documents entered in list attached to plaint—Right if extends to—Defence—Inspection before filing of—Right of—Discretion of Court to allow or disallow inspection—Principles regulating exercise of.

The right to inspection conferred by rule 15 of Order XI of the Code of Civil Procedure is not limited to documents sued upon but extends to documents relied upon by the plaintiff as evidence in support of his claim.

Documents entered in a list attached to the plaint come within the description in rule 15 of Order XI of documents to which reference is made in the pleadings. The only reasonable way of reading Order VII, rule 14, with Order XI, rule 15, is to hold that the expression "referred to" is equivalent to "entered in the list". For this purpose the list must be deemed to be part of the plaint.

Chandmull Goneshmull v. *Dhanraj Ganapatroy*, (1919) 24 C.W.N. 302, dissented from.

To the extent indicated in the proviso to rule 18 (1) of Order XI the Court has a discretion to withhold inspection; but the onus rests on the party resisting an order for inspection to show that it should not be made in the special circumstances of the case.

The English rule is ordinarily to allow inspection even though the defence may not have been put in. In India, while the Court has a certain discretion, limited to the terms of the

* Civil Revision Petitions Nos. 1907 to 1911 of 1930.

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proviso to rule 18 (1) of Order XI, it would not be a proper exercise of that discretion to refuse inspection on the general ground that it was sought before the written statement was filed.

PETITIONS under section 115 of the Code of Civil Procedure (Act V of 1908) praying the High Court to revise the order of the Principal Subordinate Judge of Devakotta, dated 13th December 1930 and made in Interlocutory Applications Nos. 1204, 1231, 1269, 1373 and 1374 of 1930.

S. Srinivasa Ayyangar (*V. Ramaswami Ayyar* with him) for petitioner.—*Quilter* v. *Heatly*(1), relied upon by the Court below, was a case where the documents inspection of which was allowed were, though not documents sued upon, yet documents which formed part of the cause of action of the plaintiff. Inspection before the filing of the defence is not allowed as a general rule; see Halsbury's Laws of England, Volume XI, page 50; *Quilter* v. *Heatly*(1), *In re H. W. Strachan (an Alleged Lunatic)*(2), *Hope* v. *Brash*(3), *In re Fenner and Lord*(4) and *Benbow* v. *Low*(5). As to how the discretion has to be exercised, see *Halliday* v. *Temple*(6), *Turner* v. *Burkinshaw*(7), *Disney* v. *Longbourne*(8), *In re H. W. Strachan (an Alleged Lunatic)*(2), *Egremont Burial Board* v. *Egremont Iron Ore Company*(9), *Roberts* v. *Oppenheim*(10), *Bustros* v. *White*(11) and *In re Fenner* and *Lord*(4). There is no rule excluding the jurisdiction of the Court to grant discovery before the filing of the defence, but the Court will not in its discretion grant discovery at that stage; see *Sachs* v. *Speilman*(12). Documents in the list are not documents in the plaint; see *Chandmull Goneshmull* v. *Dhanraj Ganapatroy*(13). This case is also authority for the position that inspection will not be allowed before the filing of the written statement. Pleading means plaint or written statement; see Order VI, rule 1, of the Code. The list to be put in under the Code is not pleading or part thereof. Order VI,

(1) (1883) 23 Ch.D. 42, 50.
(2) [1895] 1 Ch. 439, 445.
(3) [1897] 2 Q.B. 188.
(4) [1897] 1 Q.B. 667.
(5) (1880) 16 Ch.D. 93.
(6) (1856) 44 E.R. 325.
(7) (1863) 66 E.R. 762.
(8) (1876) 2 Ch.D. 704.
(9) (1880) 14 Ch.D. 158.
(10) (1884) 26 Ch.D. 724.
(11) (1876) 1 Q.B.D. 423.
(12) (1887) 37 Ch.D. 295.
(13) (1919) 24 C.W.N. 302.

rule 2, of the Code makes a distinction between evidence and pleading. Endorsement on a writ is not pleading; see *Wallis* v. *Jackson*(1). Order VII, rule 9, of the Code refers to a case of endorsement; see *Ramprasad Chimanlal* v. *Hazarimull Lalchand*(2). A list is required not for the purpose of pleading but for guaranteeing the genuineness of documents. The penalty for not putting in a list is that those documents cannot be produced in evidence. Lists are not required to be contents of the plaint. *Minakshi* v. *Velu*(3) shows why the rule as to lists was introduced. *Ram Dayal Saligram* v. *Nurhurry Balkrishna*(4) was decided under the old Code. It is also distinguishable because there the document was referred to in the plaint. *Rapaport* v. *Kallianji Hirachand*(5) shows that inspection of documents referred to incidentally in the plaint ought not to be allowed.

Advocate-General (*A. Krishnaswami Ayyar*), with him *M. Patanjali Sastri*, *M. Subbaroya Ayyar*, *K. S. Rajagopala Ayyangar*, *K. Umamaheswaram* and *T. S. Krishnamurthi Ayyar* for respondents.—Prior to the Judicature Acts the ordinary rule on the Common Law side was to order discovery before the filing of the defence; see Bray on Discovery, 1883 edn., pages 263, 269. The Chancery rule was no doubt different; see Bray, page 161. The Judicature Acts reproduced the Common Law rule. For the present practice see Bray, page 240. Under those Acts, in case of documents referred to in the pleadings, the defendant is entitled to inspection; see Bray, page 243. The rule at the time when *Quilter* v. *Heatly*(6) was decided was that inspection would be given except in cases where good cause was shown. The effect of the introduction of the proviso to rule 18 of the English rules is not to change the rule as to discretion. The defendant is entitled to inspection or discovery unless the plaintiff shows that it is not necessary for the disposal of the suit. *In re H. W. Strachan* (*an Alleged Lunatic*)(7) has nothing to do with the inspection or discovery of documents referred to in the pleadings or in the possession of a party. The observations in that case as to prying of the opponent's evidence have no application to cases of documents referred to in the pleadings,

(1) (1883) 23 Ch. D. 204.
(2) (1930) I.L.R. 58 Calc. 418, 426.
(3) (1885) I.L.R. 8 Mad. 373.
(4) (1894) I.L.R. 18 Bom. 368.
(5) (1921) I.L.R. 46 Bom. 866.
(6) (1883) 23 Ch.D. 42.
(7) [1895] 1 Ch. 439.

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because with reference to them the theory is that the plaintiff himself offers them for inspection. *Benbow* v. *Low*(1) was a case of interrogatories and has no application. *Hope* v. *Brash*(2) was not a case of documents which plaintiff proposed to produce in a list. *Parnell* v. *Walter*(3) also was not a case in which the party relied upon the documents for purposes of his case. *Sachs* v. *Speilman*(4) was a case relating to particulars. *In re Fenner and Lord*(5) also has no bearing except as to the observation of CHITTY L.J. as to the effect of the proviso to rule 18. *Disney* v. *Longbourne*(6) was a case of interrogatories. As to when discovery is to be given, see Chancery Practice, 1931 edn., page 538. To entitle the other party to inspection the documents need not be identified or particularly described in the pleadings; see *Smith* v. *Harris*(7). As to the meaning of "referred to in the pleadings" in rule 15 of Order XI of the Code, *In re Hinchliffe, a Person of Unsound Mind, Deceased*(8). Clause 2 of rule 18 of the English rules says "at any time". The restriction of the right to inspection to the stage after the filing of the written statement is therefore not justified. Mulla, in his Civil Procedure Code, ninth edition, page 571, treats the right as a *prima facie* right. *Khetsidas* v. *Narotumdas*(9), following *Ram Dayal Saligram* v. *Nurhurry Balkrishna*(10), recognizes the distinction between documents annexed in a list and those not so annexed. The latter case is treated as good law. The observations at page 154 of the former case show that a minor is entitled to inspection.

[That case would fall under rule 18 (2) which is quite different—BY COURT.]

I am referring to it only to show that documents mentioned in a list are treated on the same footing as documents referred to in the plaint. Further the other side has not shown that the documents do not bear upon the question of management, the question in issue in this case.

V. Ramaswami Ayyar in reply.—The documents in *Quilter* v. *Heatly*(11) and *Smith* v. *Harris*(7) were documents which formed part of the plaintiff's cause of action and not

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(1) (1880) 16 Ch.D. 93.
(2) [1897] 2 Q.B. 188, 192.
(3) (1890) 24 Q.B.D. 445.
(4) (1887) 37 Ch.D. 295.
(5) [1897] 1 Q.B. 667.
(6) (1876) 2 Ch.D. 704.
(7) (1883) 48 L.T. 869.
(8) [1895] 1 Ch. 117.
(9) (1907) I.L.R. 32 Bom. 152.
(10) (1894) I.L.R. 18 Bom. 368.
(11) (1883) 23 Ch.D. 42.

documents which were merely evidentiary. *In re Hinchliffe, a Person of Unsound Mind, Deceased*(1) was not a case of discovery or inspection. *Khetsidas* v. *Narotumdas*(2) follows the old rule.

Cur. adv. vult.

JUDGMENT.

These five civil revision petitions are preferred against an order of the Subordinate Judge of Devakotta passed under Order XI, rule 18 (1), of the Code of Civil Procedure and allowing the respondents, who are defendants in Original Suit No. 109 of 1930 on his file, inspection of the documents contained in a list attached to the plaint. The substantial questions which I have to decide are, firstly, whether the Court could pass such an order in respect of these documents and, secondly, whether it was justified in allowing inspection before the defendants had filed their written statements.

A plaintiff's documents are of two kinds, differentiated by Order VII, rule 14, into (1) those which he sues upon and (2) those which he relies upon as evidence in support of his claim. The order requires him to produce class (1) with his plaint and to enter class (2) in a list to be added or annexed to the plaint. Under rule 15 of Order XI a party may at any time give notice to any other party in whose pleadings or affidavits reference is made to any document to produce such document for the inspection of the party giving such notice. An attempt has been made to contend that this rule only refers to documents of the former class, those on which the plaintiff sues, and not to documents relied on as evidence in support of his claim. It appears to me that this contention must fail because,

(1) [1895] 1 Ch. 117. (2) (1907) I.L.R. 32 Bom. 152.

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in the first place, since the plaintiff has to produce documents upon which he sues at the time when he presents his plaint and has to deliver them or copies of them with the plaint, no necessity could arise to call upon him to give inspection of such documents. If a party wants to inspect the documents or copies of the documents filed with the plaint, provision is made for his doing so at the Court by rule 63 of the Civil Rules of Practice. Further, if the right to inspection were limited to documents sued upon, the rule would have been framed in different language. It is then argued that documents entered in a list attached to the plaint do not come within the description in rule 15 of Order XI of documents to which reference is made in the pleadings. This position too, I think, is untenable. The method which the Code prescribes of specifying the documents relied on in the plaint is to enter them in a list to be added or annexed to the plaint, and to hold that inspection could not be granted because these documents are mentioned in a list and not in the body of the plaint would be to render the rules relating to inspection futile. The only reasonable way of reading Order VII, rule 14, with Order XI, rule 15, is to hold that the expression "referred to" is equivalent to "entered in the list". It seems to me that for this purpose the list must be deemed to be part of the plaint, as for instance would be a schedule of property. It is to be noted that rule 14 of Order VII is headed "Documents relied on in plaint," which goes in support of this view. It is probable enough, as has been suggested, that one at least of the reasons for requiring the plaintiff to furnish a list of his documents with the plaint is to enable a defendant to apply for their inspection. I am unable to agree with *Chandmull*

Goneshmull v. *Dhanraj Ganapatroy*(1), where a learned Judge of the Calcutta High Court expressed a contrary opinion. I think that the learned Subordinate Judge has decided this point correctly.

It is then said that he has conceded inspection to the defendants as a matter of right, whereas rule 18 (1) of Order XI invests him with a discretion which he should have used in order to refuse the request. It is not very clear from the terms of the lower Court's order what amount of discretion it believed itself to possess. After adverting to a conflict in the Indian decisions the learned Subordinate Judge decides to follow the English law on the subject which he says allows the defendant "as a matter of course" to inspect the documents referred to by the plaintiff in his statement of claim, even before the defendant files his written statement. On the other hand, in one particular at least he does consider the special position of the defendants, because he remarks that the fourth defendant being a minor it would be unjust to call upon him to answer the plaintiff's claim without being allowed to inspect the documents. As to there being a discretion in the Court to withhold inspection, it is unnecessary to go beyond the terms of Order XI, rule 18 (1), which closes with the proviso:

> "Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs."

To the extent indicated the Court clearly has a discretion, though it is equally clear, I think, that the onus rests on the party resisting an order to show that it should not be made in the special circumstances of the case. This view of the intention of the rule is, I think, borne out by an examination of the corresponding

(1) (1919) 24 C.W.N. 302.

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English provision and of the case-law based upon it. Before doing this it is perhaps advisable to set out the grounds upon which the plaintiff claims that discretion should have been exercised in his favour. He disclaims any intention of founding his objections upon the nature of any particular documents and the question accordingly is whether the request should be granted or refused as a whole. The main objection raised, as has been already noted, is that it would be unfair to the plaintiff to allow inspection of his documents before the defendants file their written statements. It has also been urged that, considering the nature of the subject-matter of the suit, and the large body of documentary evidence involved, it would be oppressive to make such an order. The case-law cannot be expected to give much assistance in deciding this latter point, but it has been examined with special reference to the question whether it is usual to grant inspection before the written statement is filed.

There is a statement in Halsbury, Volume XI, page 50, that

> "as a general rule discovery cannot be obtained till after defence has been delivered, since it is not until then that it is known what are the matters in dispute."

But this statement, I think, is general as regards discovery, which includes various methods of obtaining information from the opposite party such as the administration of interrogatories, calling for affidavits, etc. As regards the production of documents for inspection the rule is given (page 68) much in the terms of our Order XI, rule 15. It is unnecessary to go back to the rules in force before the Judicature Acts, when they appear to have been different on the Chancery side from what they were at Common Law. Such a case

for instance as *Halliday* v. *Temple*(1), decided in 1856, is probably no longer good law. In Bray's Law of Discovery, page 244, the law is noted as

"that a defendant is as a rule entitled to see the documents referred to in the statement of claim before putting in his defence",

which was the old Common Law rule. The leading case since the Judicature Acts is *Quilter* v. *Heatly*(2), which was decided under a rule corresponding to our rule 18 but without the proviso. The Court of Appeal, while holding that the rule even as it stood then gave the Court a discretion to refuse an application if good cause was shown, was of opinion that a defendant could claim inspection before putting in his defence. JESSEL M.R. says :

"It is suggested that although the terms of the rule are general it is sufficient for the plaintiff, in answer to such an application by a defendant to say that the defendant has not put in his defence. I cannot conceive that this is a sufficient answer. The defendant may say, 'Your case depends partly on a set of documents which you may have set out incorrectly. I wish to see them. It may be that I have made admissions which will put me out of Court. I wish to see the documents to know whether I have made such admissions and it is important for me to see them before I put in my defence.'"

And LINDLEY L.J. expresses the view that the rules were intended to give the opposite party the same advantage as if the documents referred to had been fully set out in the pleadings. It is true that this learned Judge in *In re H. W. Strachan (an Alleged Lunatic)*(3) has stated that in England it is considered contrary to the interests of justice to compel a litigant to disclose to his opponent before trial the evidence to be adduced against him, but I doubt whether in making that general statement he had in view the production

(1) (1856) 44 E.R. 325. (2) (1883) 23 Ch.D. 42.
(3) [1895] 1 Ch. 439.

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for inspection of a plaintiff's document. The case related to an application for the production of documents not in the party's custody but in the custody of the Court in Lunacy. So too in *Hope* v. *Brash*(1) the question related not to the inspection of a document which the defendants proposed to produce in evidence but of a document in their possession which they had no intention of producing and which the plaintiff only wanted to see for a purpose unconnected with the prosecution of the suit. Several other English cases have been cited before me on behalf of the petitioner but they deal with some other form of discovery, such as the filing of interrogatories, and cannot be followed upon the subject of inspection. I see no reason to doubt that the English rule is ordinarily to allow inspection even though the defence may not have been put in. For an authority in India *Ram Dayal Saligram* v. *Nurhurry Balkrishna*(2), which follows *Quilter* v. *Heatly*(3), may be referred to. My conclusion is that while the Court has a certain discretion, limited to the terms of the proviso to Order XI, rule 18 (1), it would not be a proper exercise of that discretion to refuse inspection on the general ground that it was sought before the written statement was filed. Nor can I find anything in the special circumstances of this case to depart from the general principle. It has been urged that, having regard to the nature of the subject-matter of the suit and especially to the number of documents (834), to make such an order would be oppressive. The mere number of documents can afford no guide to the exercise of discretion and we have to look at the nature of the claims made in the plaint. It contains allegations that the first defendant and the fourth

(1) [1897] 2 Q.B. 188. (2) (1894) I.L.R. 18 Bom. 368.
(3) (1883) 23 Ch.D. 42.

defendant's adoptive father had assumed management and control of the plaintiff's estate and used that position in order to despoil it over a long term of years and in the course of a large number of transactions in India and elsewhere. The first defendant in his reply to the plaintiff, dated the 11th August 1930, has denied that he ever managed the estate, but this denial does not amount to an assertion that he never had anything to do with it, whether as adviser or in some other capacity falling short of management. The allegations in the plaint are made in a more or less general form and it would certainly be very difficult for the first defendant, having regard to their multiplicity and range, to prepare an answer unless he is allowed to see upon what documentary evidence they are based. As for the fourth defendant, who is a minor and who cannot be supposed to have any acquaintance with these transactions, it would be a sheer impossibility. I think accordingly that, so far from this being a case in which the ordinary rule should be relaxed in plaintiff's favour, it is eminently one in which it should be applied. Even though the learned Subordinate Judge has not dealt expressly with these aspects of the matter, yet, after hearing the petitioner's learned Advocate at length, I have come to the conclusion that there are no grounds to set aside the lower Court's order and re-open the application.

The civil revision petitions are dismissed but in the circumstances I make no order as to costs.

A.S.V.