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involve a power of making an order under s. 133 more extensive than the Court has. Without expressing an opinion as to what order the Court would make in a case under s. 133; in a case appropriate to it, I do not think that the Court would make any order under that section unless the preliminary steps had been taken by the party such as are set out in s. 131; and I think that no notice purporting to be a notice under s. 131 having been given, save the letter of the 21st May, and there having been no omission to give notice of the time for inspection and no objection to give inspection having been made, I am disqualified from acting under s. 133. I dismiss the application on the simple ground that I am not clothed with authority to act under s. 133.

Application refused.

Attorney for the plaintiff: Baboo *W. L. Bose.*

Attorney for the defendant: Baboo *G. C. Chunder.*

Before Mr. Justice Pigot.

PEACOCK AND OTHERS v. BYJNATH AND OTHERS.

Practice—Consolidation of suits on application of plaintiffs.

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 August 12.

Consolidation of suits on application of plaintiffs allowed.

THIS was an application made on behalf of the plaintiffs on notice to the defendants for the consolidation of two suits pending in the High Court, and for an order that the evidence in the one suit be received as evidence in the other.

The notice of motion served on the defendants was as follows:—

“Take notice that an application will be made on behalf of the plaintiffs in the suit of *Peacock v. Byjnath* for an order that this suit may be consolidated and heard along with suit No. 557 of 1882 which is now pending in this Honorable Court between the same parties, and that the evidence to be taken in the said suit may be read and filed as evidence in this suit, and that the time for the return of the commission in the said suit No. 557 of 1882 may be extended for three months, and that the plaintiffs and the defendants Byjnath may be at liberty to adduce such further evidence under the said commission as they may deem necessary for the purposes of this suit.”

Mr. Stevenson, a member of the firm of Graham & Company, and the constituted attorney of the plaintiffs on affidavit stated, that the plaintiffs had had business transactions with the defendants, both in England and Calcutta, for the last eight years; the course of business being that the plaintiffs consigned piece goods to the defendants' firm at Calcutta for sale by them upon special terms as to remittance of the proceeds of sale to the plaintiffs. That on or about the 27th September 1882, one of the partners of the defendants who was in England suspended payment, and on the 3rd October 1882, the firm of Graham & Company in Calcutta received a telegram from the plaintiffs directing them to bring a suit and obtain an injunction for protection of their goods in the hands of the defendants' firm in Calcutta; that such a suit was filed on the 5th October 1882 to recover 226 bales of piece goods, the suit being numbered 557 of 1882; that an agreement was come to between the plaintiffs and defendants, which was recorded in an order of Court, dated 30th October 1882, regarding the custody and future sale of the goods sued for, and the deposit of certain Government securities endorsed in the joint names of the plaintiffs' and defendants' solicitors, with the plaintiffs' attorneys to be held by them until the determination of the said suit and of any other suit or suits that might, within six months from the date of the said order, be brought for the purpose of determining the rights of the plaintiffs or defendants, or of any persons claiming as consignors or vendors of all goods appearing by the books of the defendants' Calcutta firm to have been consigned from England to them and to have been sold and delivered since 1st January 1882. That the plaintiffs within the aforesaid period of six months filed the present suit on the 28th April 1883, which related to goods which were consigned by the plaintiffs to the defendants for sale, and which had not been accounted for, and which it was believed had been disposed of by the defendants since January 1882, and asked for an account of the dealings between the plaintiffs and defendants, and for an enquiry as to damages, and that the securities deposited under the order of the 30th October 1882 might be applied towards payment of the amount due, and that that suit might be taken as supplemental to the suit 557 of 1882.

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The affidavit further set out that the defendant's written statement filed in the last suit advanced the same claim to the goods the subject of the suit as had been advanced by them to the goods, the subject of the suit No. 557 of 1882, and repudiated the plaintiffs' claim on the same grounds, and further raised an objection to the later suit on the ground that the relief sought ought to have been claimed in suit No. 557 of 1882. That on the 27th January 1883 an order in suit No. 557 of 1882 was made that a commission should issue to take the evidence of one Evangelo Vasilopulo then in Calcutta, and that the defendant should within three months apply for another commission to England for the further examination of the said witness. That such further commission was issued in April 1883.

The defendants declined to consent to the consolidation of the two suits, and to the admission of the evidence in the one case as evidence in the other.

Mr. Jackson for the applicants cited an unreported case of *Khetter Mohun Doss v. Behari Lall Doss*, No. 264 of 1881; *Cecil v. Briggs* (1) *Amos v. Chadwick* (2); *The Metpomene* (3), as showing that the application may be made by a plaintiff; *Nehal Singh v. Syad Alai Ahmed* (4). The unreported applications in suit No. 511 of 1881, and suit No. 637 of 1881, heard on the 2nd March 1882 and in suit No. 258 of 1880, viz., *Ramessor Dass v. Surrosuty Dass*, were also referred to. The last was an application by defendants for consolidation, plaintiffs opposing, and there the order was made for consolidation, and the cases on consolidation cited in 1 Seton on Decrees, 326, were referred to.

Mr. Phillips for the defendants Byjnath.

PICOT, J., ordered the suits to be set down and heard together: commission to be varied and to be considered as taken in both suits. Both parties to be at liberty to adduce such witnesses as they may be advised; plaintiffs to furnish defendants, and defendants to furnish plaintiffs in second suit, with list of documents duly verified by the plaintiffs' agents within ten days. Inspection to be given

(1) 2 Term. Rep., 639.

(2) L. R. 4 Ch. D., 869.

(3) L. R., 4 A. and E., 129.

(4) 15 W. R., 110.

immediately of all documents so set out, and, if necessary, order to be transmitted by plaintiffs; plaintiffs if requested by defendants to transmit order by wire to enable inspection of such documents as may have been transmitted to England at all reasonable times and places. Costs reserved, in dealing with which it should be considered whether plaintiffs were in default in not including all causes of action in one suit, or whether their conduct is susceptible of explanation.

Attorneys for the plaintiffs: Messrs. *Roberts Morgan & Co*

Attorneys for defendants: Messrs. *Sanderson & Co.*

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APPELLATE CIVIL.

Before Sir Richard Garth, Knight, Chief Justice.

KALI PROSAD BANERJI (JUDGMENT-DEBTOR) v. MESSRS.
GISBORNE & Co. (DEGREE-HOLDERS).*

1883
July 15.

Court Fees' Act (VII of 1870), cl. 17, s. 19—Stamp on memorandum of appeal by judgment-debtor in custody from order refusing application to be declared insolvent.

A judgment-debtor, whilst in custody, applied to the Court, under Chapter XX of the Civil Procedure Code, to be declared an insolvent. The application was refused, and the judgment-debtor appealed against the order rejecting his application. No Court-fee was affixed to the memorandum of appeal.

Held, that no Court-fee was leviable, under cl. 17 of s. 19 of the Court Fees' Act.

In this case Messrs. Gisborne & Co. originally sued the appellant for rent of an ijara held under them by him, and obtained a decree; at the request of the appellant, they agreed to take satisfaction by instalments. The appellant failed to pay one instalment, and was, on the application of Messrs. Gisborne & Co., arrested in execution of their decree.

Having been so arrested, the appellant, whilst in custody, applied to the District Judge of Bankurah to be declared an insolvent under the provisions of Chapter XX of the Code of Civil Procedure. The District Judge heard the application, and rejected it with costs on the ground that the applicant had frau-

Reference under s. 5 of the Court Fees' Act VII of 1870.