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of occupancy that has always perhaps been inherent in the proprietor of a share, a right to occupy a portion of the lands as his sír, either for his own cultivation, or to sublet them to others. Whether this be so or not, that he has a recognized interest in the right to occupy the land held by him as sír, in the event of his losing or parting with his proprietary rights in the mahál, would appear to be quite clear. How far the second paragraph of s. 9 of the Rent Act would invalidate such a sale of the occupancy-right, as being contrary to law and policy, is another matter, which might have required fuller consideration. But I feel myself bound by the ruling of the Full Bench in *Umrao Begam* v. *The Land Mortgage Bank of India* (1), from which, however, I dissented. I am of opinion that the appeal should be decreed and that the case should go back to the lower appellate Court to be tried on the merits.

STRAIGHT, J.—I have had some doubt as to the proper construction to be put upon s. 7 of the Rent Act, but after very careful consideration, I agree with the view of Mr. Justice Spankie as stated in his judgment. I may add, that like him I feel bound by the decision of the Full Bench (1) referred to, though were the matter still an open one, I should hold the prohibition of s. 9 of the Rent Act to apply strictly.

Cause remanded.

Before Mr. Justice Pearson and Mr. Justice Straight.

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NARAINI KUAR (DEFENDANT) *v.* DURJAN KUAR AND OTHERS (PLAINTIFFS)*

NARAINI KUAR (DEFENDANT) *v.* PIAREY LAL AND OTHERS (PLAINTIFFS)*

Addition of parties—Act X of 1877 (*Civil Procedure Code*), *s.* 32.

Held, reading ss. 28, 29, and 32 of Act X of 1877 together, that, where an application is made under s. 32 for the addition of a person whether as plaintiff or defendant, such person should, as a general rule, be added, only where there are questions directly arising out of and incidental to the original cause of action, in which such person has an identity or community of interest with the original plaintiff or defendant.

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(1) I. L. R., 2 All., 451.

* First Appeals, Nos. 101 and 102 of 1879, from orders of Maulvi Abdul Qayum Khan, Subordinate Judge of Bareilly, dated the 4th July, 1879.

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Two suits against *K* for possession of the property of *B*, deceased, were instituted in the Court of a Subordinate Judge by parties claiming adversely to one another as heirs to *B*. The Subordinate Judge, on the applications of the plaintiffs in these suits, under s. 32 of Act X of 1877, added the plaintiffs in the first suit as defendants in the second, and the plaintiffs in the second suit as defendants in the first. *Held*, on appeal by the defendant *K* from the orders of the Subordinate Judge, applying the rule stated above, that such additions of parties, not being necessary to enable the Subordinate Judge "effectually and completely to adjudicate upon and settle all the questions involved in the suits," were not proper.

The principles on which s. 73 of Act VIII of 1859 should be interpreted enunciated by Sir Barnes Peacock in *Joy Gobind Doss* v. *Gouree Prashad Shaha* (1), *Raja Ram Tewary* v. *Luckman Pershad* (2), and *Ahmed Hossain* v. *Khoshja* (3), and the remarks of Pontifex, J. in *Mahomed Budhsa* v. *Nicol* (4) followed and applied.

WHILE two suits against one Naraini Kuar numbered respectively 63 and 76 were pending in the Court of the Subordinate Judge of Bareilly, the plaintiffs in suit No. 63 applied, under s. 32 of Act X of 1877, to be made defendants in suit No. 76, and the plaintiffs in suit No. 76 applied, under the same section, to be made defendants in suit No. 63. On the 4th July, 1879, the Subordinate Judge passed orders granting these applications. In each case the application was granted on the ground that a suit by the applicants in the other case against Naraini Kuar relating to the same property was pending. Naraini Kuar appealed against these orders to the High Court.

Mr. *Hill*, for the appellant.

Mr. *Conlan*, Munshi *Hanuman Prasad*, and Pandit *Bishambhar Nath*, for the respondents in No. 101.

Mr. *Colvin* and Pandit *Bishambhar Nath*, for the respondents in No 102.

The judgment of the Court (PEARSON, J., concurring) was delivered by

STRAIGHT, J.—These are first appeals from two orders, passed by the Subordinate Judge of Bareilly, on the 4th of July, 1879.

(1) 7 W. R., 202.
(2) 8 W. R., 15.
(3) 10 W. R., 369; 3 B. L. R., A. C., 23.
(4) I. L. R., 4 Calc., 355.

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NARAINI KUAR v. DURJAN KUAR NARAINI KUAR v. PIAREY LAL.

In order to make the question of law raised on behalf of the appellant intelligible it is necessary to recapitulate the following facts.

It appears that two suits are pending in the Court of the Subordinate Judge against one Naraini Kuar. In the first of these the plaintiffs are Rani Durjan Kuar, Chandi Din, and Mashuk Mahal Sahiba Begam, and in the second Piarey Lal, Bhairon Prasad, Shib Lal, and Narbada Prasad. The litigation relates to the ancestral property of Chaudhri Basant Ram, deceased. The three plaintiffs in case No. 1 sue for possession of the property by right of inheritance,—Rani Durjan Kuar as widow of Basant Ram and stepmother of Chaudhri Naubat Ram, his son, also deceased; Chandi Din as grandson of Basant Ram and sister's son of Naubat Ram; and Mashuk Mahal Sahiba Begam as vendee of a portion of the property in suit from the other two plaintiffs, under a sale-deed of the 17th of February, 1879. In case No. 2 the four plaintiffs, alleging themselves to be the nearest heirs of the deceased Naubat Ram, sue for proprietary possession, by cancelment of an order of the 15th August, 1879, declaring Naraini Kuar to be the owner of the property in suit and directing the entry of her name, in that character, in the *khewat*. To both suits the defendant replies, that she is entitled to the property by virtue of the adoption of her deceased husband, Raghunaudan Prasad, by Naubat Ram. It is admitted that she is in possession, and that her name is entered in the revenue records. The two plaints were filed respectively, in the first case, on the 17th April, and, in the second, on the 12th May, 1879. The pleas of the defendant were put in on the 4th of July. Upon that day application was made, under s. 32 of Act X of 1877, by both sets of plaintiffs, praying that they might be added as defendants in that suit in which they were not plaintiffs, and thereupon the orders now appealed were passed.

It is objected before us on behalf of the original defendant, Naraini Kuar, that these orders are irregular and illegal; that the Subordinate Judge has misinterpreted the provisions of s. 32 of Act X; that he has improperly exercised the discretion vested in him under that section; and that it is inequitable that the defendant should be hampered and embarrassed in the conduct of her case, by being placed between a cross-fire of adverse claims,

those of the plaintiffs on the one hand and of the defendants on the other.

The question thus raised is one of much importance, as to the procedure and practice contemplated by s. 32. The substantial point for determination appears to be, has the Subordinate Judge, having regard to the permissive character of s. 32, properly, that is, within the terms of the section, exercised his discretion in passing the two orders appealed.

No doubt it is most desirable, when litigation has been instituted in respect of a particular subject-matter or specific contract, that the Court having cognizance of it should see that all questions directly springing out of it should be raised and dealt with once and for all, and that all persons naturally concerned in and likely to be legally affected by the determination of those questions should be joined as parties. The practice of the English Equity Courts has always been to recognise this principle in its widest aspect, and the Orders under Rule XVI of the Judicature Act afford abundant facilities for the joinder of parties. It is noticeable that their language, with slight exception, is repeated word for word in the earlier sections of the 3rd chapter of the Civil Procedure Code, though it is worthy of observation that the provisions of Orders 17 and 19, as to adding persons from whom a defendant claims contribution or indemnity, or others whom the Court or Judge thinks should be joined for the purpose of a question being determined, not only as between the plaintiff and defendant, but between them and such other person, have not been incorporated. While the propriety of preventing unnecessary and expensive repetition of litigation and multiplication of suits cannot be questioned, neither as a principle of justice to litigants nor as a convenient rule of practice can an indiscriminate joinder either of causes of action or of parties be tolerated.

It becomes necessary to closely examine not only the terms of s. 32, but also the kindred provisions in the earlier part of chapter III, which now replace the legislation formerly contained in s. 73 of Act VIII of 1859. First as to s. 32, the Court may at any time, either upon or without application, "order that any plaintiff be made a defendant or that any defendant be made

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a plaintiff, and that the name of any person who ought to have been joined whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suits, be added." But it seems to me that, in exercising the very wide discretion given by these later words, regard should be had to the terms of ss. 28 and 29, and the test as to the joinder of defendants should be whether the relief sought is "in respect of the same matter," or the liability alleged to exist relates to "any one contract."

Now let us see how the language of these sections is applicable to the cases under consideration. So far as the two sets of plaintiffs are concerned, it is obvious that their claims are altogether adverse, and that, as between them, there is a question of priority of heirship to be decided, in which Naraini Kuar, the original defendant, has no actual interest. It is true that the property to which they both assert a title is one and the same, but I do not think that this circumstance justifies the orders of the Subordinate Judge. Apart from all questions of inconvenience or embarrassment to the principal defendant in the conduct of her defence, should she fail to establish the adoption on which the whole fabric of her case rests, I do not see how, as between the plaintiffs and the joined defendants, no matter in which case, any decision that can be passed will estop either of them from subsequent assertion of their rights against one another in a separate suit. It does not appear to me that the plaintiffs in either case could have joined the other plaintiffs in their original plaint as defendants, for they sought no relief against them, and the relief they did seek against Naraini Kuar was not in the sense of s. 28 in respect of "the same matter." The joinder of the two sets of plaintiffs, as defendants, in accordance with the order of the Subordinate Judge, can only be reasonable, if they are to be equally bound by the decree in one suit, not only as to the principal defendant, but as between themselves; and it is only in this sense that "their presence before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit." But the question involved in each suit is not what are the rights of the two

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sets of plaintiffs *inter se*; the issue to be decided between the defendant Naraini Kuar and each set of plaintiffs is perfectly plain and intelligible, and, as she is in possession, the burden of proof will be on those who assail her title. Necessarily all the plaintiffs are interested in the determination of the "adoption," set up by the principal defendant, but, as I have already remarked, I do not see how a finding upon this point in either suit can bind the joined defendants to the plaintiffs or the plaintiffs to the joined defendants, in respect of their mutual claims between one another to the property, or in the event of the principal defendant establishing the adoption in one case can obviate a second trial. No plea of *res judicata* could be sustained. Upon the argument before us Mr. Hill for the appellant called our attention to three lengthy judgments of Sir Barnes Peacock—*Joy Gobind Doss* v. *Gouree Prashad Shaha* (1); *Raja Ram Tewary* v. *Luchman Pershad* (2); *Ahmed Hosain* v. *Khodeja* (3)—which are valuable and instructive. For though these were given upon cases arising under s. 73 of Act VIII of 1859, the reasoning and principles of interpretation enunciated may appropriately be followed in construing s. 32, Act X of 1877. Under s. 73, Act VIII of 1859, the Court had power to join "all parties who may be likely to be affected by the result," an expression that might be taken to mean a great deal more than was ever intended by the legislative authorities, and which Sir Barnes Peacock in the judgments already adverted to was careful to qualify and reduce within intelligible limits. But now reading, as I think one should, ss. 28, 29 and 32 of Act X together, the terms "questions involved in the suit" must be taken to mean questions directly arising out of and incident to the original cause of action, in which, either in character of plaintiff or defendant, the person to be joined has an identity or community of interest with that party in the litigation on whose side he is to be ranged. I do not lay this down as an irrefragable rule by which applications under s. 32 of Act X should be determined; for cases may arise similar to *Saroda Pershad Mitter* v. *Kylash Chunder Banerjee* (4) and *Kali Prasad Singh* v. *Jainarayan Roy* (5); but in the multi-

(1) 7 W. R. 202.
(2) 8 W. R. 15.
(3) 10 W. R. 368; 3 B. L. R., A. C., 28.
(4) 7 W. R. 315.
(5) 3 B. L R., A. C., 23.

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tude of instances it will be a useful test to apply in deciding whether the presence of parties is necessary to enable the Court "effectually and completely to adjudicate and settle the questions involved in the suit." I entirely agree with the remarks of Pontifex, J. in *Mahomed Badsha* v. *Nicol* (1), and applying them in the present cases, it appears to me that the joinder of the two sets of plaintiffs as defendants was not necessary to enable the Court effectually and completely to settle the question arising between the plaintiffs and Naraini Kuar in the respective suits. I, therefore, think that the Subordinate Judge improperly passed the two orders of the 4th of July and that these appeals must be allowed with costs. The defendants who have been added to the record will be struck off, their statements of defence returned to them, and the plaints restored to their original shape.

Appeals allowed.

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Before Mr. Justice Pearson and Mr. Justice Spankie.

PARSHADI LAL (DEFENDANT) *v.* RAM DIAL (PLAINTIFF).*

Suit for Pre-emption—Deposit of purchase-money—Appellate Court, powers of—Act X of 1877 *(Civil Procedure Code), s.* 214.

The decree of the Court of first instance in a suit to enforce a right of pre-emption directed that the sum which that Court had ascertained to be the purchase-money should be deposited within one month from the date of the decree. The plaintiff appealed, contending that such sum was not the purchase-money. While the appeal was pending the time fixed by the decree of the Court of first instance expired without any deposit having been made. The appellate Court dismissed the appeal, fixing by its decree, of its own motion, a further time for the deposit. *Held*, following *Sheo Prasad Lal* v. *Thakur Rai* (2), that the appellate Court was competent to extend the time for making the deposit, and its action and order did not contravene the provisions of s. 214 of Act X of 1877.

THIS was a suit to enforce a right of pre-emption in which the plaintiff alleged that the purchase-money was Rs. 600, and not Rs. 800 as entered in the deed of sale. The Munsif determined

(1) I. L. R., 4 Calc., 355.

* Second Appeal, No. 943 of 1879, from a decree of Mirza Abid Ali Beg, Subordinate Judge of Mainpuri, dated the 29th May, 1879, affirming a decree of Babu Sanwal Singh, Munsif of Etawah, dated the 14th December, 1878

(2) H. C. R., N.-W. P., 1868, p. 254.