

the facts of which are very similar to those of the present case. Their Lordships of the Privy Council there said: "In the midst, therefore, of this conflicting evidence, their Lordships think it right to consider whether there is any presumption to be derived from the other parts of the case in favour of the one side or the other. Now the ordinary presumption would be that possession went with the title. The presumption cannot, of course, be of any avail in the presence of clear evidence to the contrary; but where there is strong evidence of possession, as there is here on the part of the respondents, opposed by evidence, apparently strong also, on the part of the appellant, their Lordships think that, in estimating the weight due to the evidence on both sides, the presumption may, under the peculiar circumstances of this case, be regarded; and that with the aid of it, there is a stronger probability that the respondents' case is true than that of the appellant."

We see, therefore, no reason to interfere, and we dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Field and Mr. Justice O'Kinealy.

S. CAMPBELL (DEFENDANT) v. J. A. JACKSON, MANAGER OF THE
JOKAI ASSAM TEA COMPANY, LIMITED, (PLAINTIFF.)*

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June 19.

*Plaint, Form of—Practice—Form of Suit by Company—Corporation, Suit by—
Plaintiff, Misdescription of—Civil Procedure Code (Act XIV of 1882),
s. 435—Indian Companies Act (VI of 1882), s. 41.*

A plaintiff was filed in which the plaintiff was described as Mr. J., Manager of the X Company, Limited, and in the body of the plaint several allusions were made to the "plaintiff-company," and the claim made in the plaint was a claim made on behalf of the Company.

It was not suggested that the X Company was a Company authorised to sue or be sued in the name of an officer or trustee, nor was it shown that it was registered as a corporation under s. 41 of the Indian Companies Act.

Held, that the suit was badly framed and that it should be dismissed.

* In this case the plaintiff was described as "Mr. J. A. Jackson, Manager of the Jokai Division of the Jokai Assam Tea Company,

* Appeal from Appellate Decree No. 1259 of 1884, against the decree of C. J. Lyall, Esq., Officiating Judge of the Assam Valley Districts, dated the 18th of April 1884, affirming the decree of F. St. C. Grimwood, Esq., Subordinate Judge of Debrugar, dated the 11th of September 1883.

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 JACKSON, Limited, of Chalkhowa, Debrugur." The plaintiff commenced with the following: "I, J. A. Jackson, Manager of the Jokai Assam Tea Company, Limited, state as follows," and contained in several places allusions to "the plaintiff-company."

The suit was brought for the purpose of recovering possession of some ten acres of land in the possession of the defendant, upon the allegation that they lay within the boundaries of a grant from the Secretary of State to the Jokai Company, which grant had been redeemed by the said Company, and of which land the Company was therefore the absolute owner. There was also a claim for damages for wrongful cutting and removing of timber from the land in suit, but that claim was abandoned.

The plaintiff was verified by Mr. Jackson as Manager and Attorney for the Jokai Tea Company, Limited.

The defendant in answer, amongst other pleas, contended that, as the Jokai Assam Tea Company was conducted in London, the plaintiff Jackson was not entitled to sue unless duly empowered in that behalf by the Director of the Company.

No evidence was adduced to show that the Jokai Company was a Company authorised to sue or be sued in the name of an officer or trustee, nor was it shown that the Company was registered under the Indian Companies Act.

The first Court treated the suit as one brought by the Company through Mr. Jackson its Manager, and amongst other issues framed the following: Can plaintiff (Mr. Jackson) sue? On this issue the Court held that there could be no doubt that upon the power-of-attorney originally filed Jackson was not empowered to sue, as the Company had, subsequent to the date of the power, been dissolved and a fresh Company formed. The Court found, however, that Jackson had subsequently filed a fresh power granted by the new Company, and prayed that the new Jokai Company might be substituted as plaintiffs under s. 27 of the Civil Procedure Code, and holding that there had only been a nominal change, decided the issue in the affirmative. The other issues being found in favor of the claim set up in the plaintiff, the first Court passed a decree giving "the plaintiff-company" possession of the land, the subject-matter of the suit.

The defendant appealed, and in his memorandum of appeal raised the same issues as were raised in the Court below, but it appeared from the judgment of the lower Appellate Court that at the hearing of the appeal he had abandoned the plea that Jackson had no right to sue on behalf of the Company.

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Upon the other issues the lower Appellate Court upheld the finding of the Court below, and the appeal was accordingly dismissed with costs.

The defendant now preferred a special appeal to the High Court upon, amongst others, the following grounds:—

(1) That the lower Courts were wrong in law in proceeding with the suit on behalf of the Manager and in allowing the amendments of the plaint, and that the provisions of s. 26 were not applicable to the case.

(2) That the lower Appellate Courts erred in stating that this plea was abandoned on the appeal.

None of the other grounds were touched upon at the hearing of the appeal.

Mr. *R. E. Twidale* appeared on behalf of the appellant.

Baboo *Mohini Mohun Roy* and Mr. *Simmons* for the respondent.

The judgments of the High Court (FIELD and O'KINEALY, JJ.) were delivered by

FIELD, J.—We think this appeal must succeed upon a single point. The suit was brought by Mr. J. A. Jackson, as Manager of the Jokai Division of the Jokai Assam Tea Company, Limited. There is no doubt that the plaintiff on the record is Mr. Jackson, who is described as the Manager of the Jokai Division of the Jokai Assam Tea Company. The plaintiff on the record is not the Jokai Assam Tea Company; and in saying this we do not overlook paras. 2 and 7 of the plaint which speak of “the plaintiff-company.” The law on the subject is very simple, and it is to be found in s. 435 of the Civil Procedure Code. In suits by a corporation, or by a company authorized to sue and be sued in the name of an officer or of a trustee, the plaint may be subscribed and verified on behalf of the Corporation or Company, by any Director, Secretary, or other principal officer of the Corporation or Company, who is able to depose to the facts of the case.” Now, there is no suggestion in this case that this Company is a Company

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authorized to sue or be sued in the name of an officer or trustee. Such authority could only be conferred by Act of Parliament or by an Act of the Indian Legislature. There are some Acts in the Indian Statute Books by which certain companies are authorized to sue and be sued in the name of an officer, but no authority has been shown for holding that this Company is one of them. Then the word "Corporation" is used with reference to section 41 of the Indian Companies Act. Under that section, when a Company has been registered, the Registrar is to certify under his hand the fact of such incorporation. The effect is that a Company which has been duly registered under the Indian Companies Act of 1882, is a Corporation, and being a Corporation, although the suit must be brought in the registered name of the Company, the plaint may be verified by a Secretary, Director or other principal officer, &c. If the present suit had been brought in the name of the Jokai Assam Tea Company, and if that Company had been registered under the Indian Companies Act, and if Mr Jackson, as an officer of the Company, had verified the plaint, the procedure would have been correct. But the suit has not been brought in the name of the Company. It is brought in the name of Mr. Jackson. Even if we could so construe the plaint as to treat the suit as a suit by the Company, there is nothing to show that the Company has been registered under the Indian Companies Act, and is therefore entitled to have the plaint verified by a principal officer on behalf of the Company.

We think, therefore, that this suit must fail. The appeal will be decreed, but without costs, as we find that the point was abandoned in the Court below.

The defendant will get his costs in both the Courts below.

Appeal allowed.