wrong in holding that the receipt given by Musammat Sundar, one of the two co-sharers, was a valid receipt and discharge for the rent due. We dismiss this appeal with costs.

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PARBATI v. NIADAR.

Appeal dismissed.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Burkitt.

1895 *December* 14.

SALIMA BIBI AND OTHERS (DEFENDANTS) *v.* SHEIKH MUHAMMAD AND OTHERS (PLAINTIFFS.)*

Cause of action, definition of—Misjoinder of causes of action—Civil Procedure Code, sections 31, 45, 53.

The term 'cause of action' as used in sections 31 and 45 of the Code of Civil Procedure is there used in the same sense as it is used in English law, *i.e.*, a cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved.

Where three plaintiffs brought a joint suit for the possession of immovable property, in which two of them were claiming half the property under a title by inheritance, and the third was claiming the other half of the property in virtue of a sale thereof to him by the first two plaintiffs, *held* that the suit so framed was bad for misjoinder of causes of action, and that the plaint should be returned, that the plaintiffs might elect which of them should proceed with the suit.

Jugobundhoo Dutt v. *Mrs. C. B. Maseyk* (1), *Anund Chunder Ghose* v. *Komul Narain Ghose* (2), *Prem Shook* v. *Bheekoo* (3), *Cooke* v. *Gill* (4), *Read* v. *Brown* (5), *Smurthwaite* v. *Hannay* (6), *Musummat Chand Kour* v. *Partab Singh* (7), *Murti* v. *Bhola Ram* (8), *Nusserwanji Merwanji Panday* v. *Gordon* (9), *Ramanuja* v. *Devanayaka* (10), and *Ram Sewak Singh* v. *Nakched Singh* (11), referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Munshi *Ram Prasad* for the appellants.

Pandit *Sundar Lal* for the respondents.

EDGE, C.J., and BURKITT, J.—This appeal has been brought by the defendants from the decree of the Subordinate Judge of Jaunpur. The plaintiffs in the suit are Sheikh Muhammad, the

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* First appeal No. 136 of 1892, from a decree of Rai Anant Ram, Subordinate Judge of Jaunpore, dated the 12th March 1892.

(1) W. R., 1864 p. 81.
(2) 2 W. R., 219.
(3) N.-W. P. H. C. Rep., 1868, p. 242.
(4) L. R., 8 C. P., 107.
(5) L. R., 22 Q. B. D., 128.
(6) L. R., 1894, A. C., 494.
(7) L. R., 15 I. A., 156.
(8) I. L. R., 16 All., 165.
(9) I. L. R., 6 Bom., 266.
(10) I. L. R., 8 Mad., 361.
(11) I. L. R., 4 All., 261.

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son, and Musammat Nisha Bibi, the widow of Sheikh Imam Bakhsh, deceased, and Sheikh Akbar Ali. The suit is one in which the plaintiffs claim to be declared sharers of one-half and the defendant No. 3 sharer in the other half of the property set forth in the list accompanying the plaint, and the plaintiffs further claim a decree for possession of the half share of the property included in the list. The plaintiffs further claim a large sum as *mesne* profits, and other reliefs. The two first-mentioned plaintiffs whom we shall call plaintiffs Nos. 1 and 2, claim title through Sheikh Imam Bakhsh deceased, and in the eighth paragraph of the plaint it is alleged:—"The plaintiffs Nos. 1 and 2 have sold one-half out of their half-share in the property in suit to plaintiff No. 3, and so the plaintiff No. 3 has also joined in the suit." The defendants by their pleadings denied the title of the plaintiffs, and also pleaded that the suit was bad for misjoinder; it is with the latter plea that we propose to deal in this judgment. The Subordinate Judge gave the plaintiffs a decree for their claim in part; from that decree this appeal has been brought by the defendants. In this judgment we do not propose to express any opinion on the alleged title of the plaintiffs or on any issue arising in the case, except that raised by the plea of misjoinder of parties and causes of action.

The suit was instituted on the 21st of May 1891. The alleged assignment by the plaintiffs Nos. 1 and 2 to the plaintiff No. 3, Sheikh Akbar Ali, was by a sale-deed alleged to have been executed on the 9th of October 1889, by which the plaintiffs Nos. 1 and 2, acknowledging to have received the entire consideration of 7,000 rupees, purported to sell and assign to Sheikh Akbar Ali a moiety of their alleged share in certain zamíndári property and houses and in debts due to them. In the detail at the end of the sale-deed of the property sold the specific shares, the title to which the deed purported to pass, are set forth. Assuming for present purposes that the sale-deed did pass to Akbar Ali the interest which it purported to assign, and that the plaintiffs Nos. 1 and 2 had title to that share in the property, the moiety of which the deed purported to assign, it is obvious that the plaintiffs Nos. 1 and 2

had not, at the time when the suit was instituted, any interest in the moiety of the half-share which the deed purported to pass to Sheikh Akbar Ali, and that at the time when the suit was instituted Sheikh Akbar Ali had no interest in the moiety of the half-share originally of the plaintiffs Nos. 1 and 2, which was not by that deed assigned to him. It is also manifest that at the commencement of this suit the plaintiffs Nos. 1 and 2 had no cause of action in respect of the alleged wrongful possession by the defendants of the share which the plaintiffs Nos. 1 and 2 had assigned to Sheikh Akbar Ali, and similarly that Sheikh Akbar Ali at the institution of this suit had no cause of action in respect of that part of the share of the plaintiffs Nos. 1 and 2 which had not been assigned to him. The Subordinate Judge decided that there was no misjoinder of parties, or of causes of action. The defendants have, by their memorandum of appeal, alleged that the claim is bad for misjoinder. On behalf of the plaintiffs it was contended before us that the cause of action of all the plaintiffs was joint; that the common cause of action of the plaintiffs was the alleged wrongful withholding by the defendants from the plaintiffs of possession; and that in any event the plaintiffs were entitled, under section 45 of Act No. XIV of 1882, to unite in this suit their several causes of action, if in fact their causes of action were several, and reliance was placed upon some decisions in India, according to which several plaintiffs having several titles to separate subjects of property had one cause of action if they were dispossessed at the same time and by the same act of the defendants. On behalf of the defendants it was contended that the cause of action of the plaintiffs Nos. 1 and 2 was distinct and separate from the cause of action of the plaintiff No. 3, Sheikh Akbar Ali; and that, although the alleged title of the three plaintiffs down to the assignment of the 9th of October of 1889 is a common title, and although the plaintiffs allege a wrongful withholding of possession from them jointly, the plaintiffs Nos. 1 and 2 and the plaintiff No. 3 had not within the meaning of section 45 a cause of action at the date of the suit in which they were jointly interested, although they might

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be mutually interested in defeating the defendants in the suit. It was also contended on behalf of the defendants-appellants that the suit was in contravention of the second paragraph of section 31 of Act No. XIV of 1882, which is as follows:—

"Nothing in the section shall be deemed to enable plaintiffs to join in respect of distinct causes of action."

In addition to the cases which will be subsequently mentioned by name in our judgment, the following cases were referred to in the course of the argument on the question which we have to decide: *Behari Lal* v. *Kodu Ram* (1), *Mewa Kuar* v. *Banarsi Prasad* (2), *Haranomi Dassi* v. *Hari Churn Chowdhry* (3), *Fakirapa* v. *Rudrapa* (4), *Bai Shri Majirajba* v. *Magan Lal Bhai Shankar* (5), *Loke Nath Surma* v. *Keshab Ram Doss* (6), and *James Hills* v. *S. G. Clark* (7).

In order to understand the course of legislation and the authorities on this subject, it is necessary to refer to some of the Codes of Civil Procedure which preceded the present Code. By section 8 of Act No. VIII of 1859 it was enacted:—"Causes of action by and against the same parties, and cognizable by the same Court, may be joined in the same suit, provided the entire claim in respect of the amount or value of the property in suit do not exceed the jurisdiction of such Court." Whilst that section was in force it was decided in *Jugobundhoo Datt* v. *Mr. C. B. Maseyk* (8) that in a suit by two plaintiffs for the value of personal property plundered, of which one plaintiff claimed to be the proprietor of certain articles, and the other plaintiff of others, if the cause, the time, the place and the parties charged be the same in both instances, the fact that both plaintiffs had not a joint interest in the whole of the property plundered by the defendants was insufficient to put them out of Court. Whilst the same section was in force it was decided in *Anund Chunder Ghose* v. *Kumul Narain Ghose* (9) that where a village had been divided into four separate

(1) I. L. R., 15 All., 380.
(2) I. L. R., 17 All., 533.
(3) I. L. R., 22 Calc., 833.
(4) I. L. R., 16 Bom., 119.
(5) I. L. R., 19 Bom., 303.
(6) I. L. R., 13 Calc., 147.
(7) 14 B. L. R., 367.
(8) W. R., 1864, p. 81.
(9) 2 W. R., 219.

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portions amongst four different parties who were afterwards dispossessed under one and the same survey award, which demarcated the village as appertaining to the share of another person, the four persons dispossessed had a common cause of action and could jointly sue the person to whom possession of their four separate portions of the village had been given. That case was expressly decided on section 8 of Act No. VIII of 1859, the learned Judges holding that, "as the survey award was one act by which all the plaintiffs were dispossessed and defendant put in possession of the one village which had been divided into four portions, the four sets of proprietors of the village aggrieved by that one act had a common cause of action." The next case to which we will refer is that of *Prem Shook* v. *Bheekoo* (10). That case arose under section 5 of Act No. VIII of 1859, which gave Civil Courts jurisdiction "if, in the case of suits for land or other immovable property, such land or property shall be situate within the limits to which their respective jurisdiction may extend; and in all other cases if the cause of action shall have arisen, or the defendant at the time of the commencement of the suit shall dwell, or personally work for gain, within such limits." That was a suit upon a bond executed in the Saháranpur district. The suit was brought in the Dehra Court, and not in that of the Saháranpur Court. In that case the learned Judges held that the Legislature meant to give jurisdiction to the Court where the facts which immediately confer the right to sue occurred. They said :—"In the present case the non-payment of the amount of the bond, is the circumstance which has immediately conferred the right to sue, but to maintain the suit the plaintiff must prove the bond the non-payment of which is the cause of suit." In 1877, Act No. X of 1877 was passed. The first paragraph of section 45 of that Act was as follows :—"Subject to the rules contained in section 44, the plaintiff may unite in the same suit several causes of action, and any plaintiffs having causes of action against the same defendant or defendants may unite such causes of action in the same suit." The next amendment of Civil

(10) N.-W. P., H. C. Rep. 1868, p. 242.

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Procedure was effected by Act No. XII of 1879; and by section 9 of that Act the first paragraph of section 45 of Act No. X of 1877 was amended by substituting for that paragraph the words following:—"Subject to the rules contained in Chapter II and in section 44, the plaintiff may unite in the same suit several causes of action against the same defendant or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit." The same wording was followed in section 45 of the present Code of Civil Procedure (Act No. XIV of 1882) when that Code was passed. Although it appears to us that section 8 of Act No. VIII of 1859, the first paragraph of section 45 of Act No. X of 1877, and the first paragraph of the present Code mean the same thing, we assume that the Legislature by the amendment of 1877, by the amendment of 1879, and by the wording of the first paragraph of section 45, as it at present stands, intended to make it clear that their intention was that several plaintiffs could only join in suing several defendants in one suit for several causes of action when the plaintiffs were jointly interested in each and all of such causes of action, and that the second part of the first paragraph of section 45 is merely enacting that several plaintiffs jointly interested in the same causes of action against the same defendant or several defendants jointly may sue in the same manner as by the first part of that paragraph it is enacted one plaintiff may sue one defendant or more jointly in one suit on several causes of action, to which the defendants, if more than one, were parties, and that it did not intend to confer a right by section 45 on several plaintiffs to sue, on causes of action which were not jointly vested in them, one or more defendants, although the acts of all the defendants jointly might have completed a separate cause of action of each several plaintiff and afforded him a cause of action on which he could sue alone.

The cases which have been decided on section 5 of Act No. VIII of 1859, and upon section 17 of Act No. X of 1877, and

upon section 17 of Act XIV of 1882, whether they were rightly decided or not, do not appear to us to be in point. The difficulty which arose under section 5 of Act No. VIII of 1859, under clause (a) of section 17 of Act No. X of 1877, and under clause (a), section 17 of Act No. XIV of 1882 had to be met, and, as we understand those decisions, what they meant was that the cause of action arises when the last act necessary for constituting a cause of action is done or happens. It was attempted by explanation III to section 17 of Act No. XIV of 1882 to deal to some extent with the difficulties which had arisen in applying clause (a) as it had stood in section 17 of Act No. X of 1877, and as it had stood in effect in section 5 of Act No. VIII of 1859.

The question which we have to consider is—what did the Legislature mean when it used in the last paragraph of section 31 of Act No. XIV of 1882, the words "distinct causes of action," and what did it mean by the first paragraph of section 45 of the same Act? In other words, did the Legislature mean merely by cause of action the final act of a series which constituted a cause of action, or did it mean by a cause of action all those facts which, if traversed by the defendant and not proved by the plaintiff, would entitle the defendant in the suit to judgment? In our opinion the Legislature, when it used the terms "cause of action" and "causes of action," meant what has been known for centuries [see *Cooke* v. *Gill* (1)] to the law in England as a cause of action or causes of action and did not mean that a cause of action meant a part only of the cause of action. It was held by Lord Esher, M. R., in *Read* v. *Brown* (2), that a cause of action is "every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved." Fry, L. J., agreed; and said:—"Everything which, if not proved, gives the defendant an immediate right to judgment must be part of the cause of action." In the same case Lopes, L. J., said:—"I agree with the definition given

(1) L. R., 8 C. P., 107. (2) L. R., 22 Q. B. D., 128.

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by the Master of the Rolls of a cause of action, and that it includes any fact which it would be necessary to prove, if traversed, in order to enable a plaintiff to sustain his action." In our opinion the definitions above quoted from the judgments in *Read* v. *Brown* correctly define the term "cause of action," as the Legislature intended that term to be understood in the Code of Civil Procedure. That those definitions were correct may be inferred from the judgments of the learned Lords in *Smurthwaite* v. *Hannay* (1) and of their Lordships of the Privy Council in *Musammat Chand Kuar* v. *Partab Singh* (2). In *Murti* v. *Bhola Ram* (3) the Full Bench of this Court considered that the cause of action of the Code of Civil Procedure was the same as the cause of action as defined in *Read* v. *Brown*. In *Nusserwanji Merwanji Panday* v. *Gordon* (4) Sir Charles Sargent, J., clearly indicated that it was not the final act of a series which constituted a cause of action, but all those acts which it was necessary for the plaintiff to prove, if traversed, to entitle him to judgment. The learned Judges in *Ramanuja* v. *Devanayaka* (5) took the same view of the law.

If some of the decisions relied on on behalf of the plaintiffs were correct, one hundred different consignors of separate parcels of goods accepted by a Railway Company to be carried and delivered to different consignees, might join in suing in one suit the Railway Company, if by one and the same negligent act of the Railway Company, or its servants, the truck in which the one hundred parcels of goods were being carried by the Railway Company was, with its contents, destroyed. It appears to us that there is no middle course; the Court must either adhere to the true and correct meaning of the term "cause of action," or permit any number of persons, each of whom has a separate and distinct cause of action, to bring one common suit against a wrong-doer, provided only that the separate wrong which was committed against each of the parties, was committed at one and the same time and by the same act. In the case before us the plaintiffs Nos. 1 and 2 could not, if the assignment

(1) L. R., 1894, A. C., 494.
(2) L. R., 15 I. A., 156.
(3) I. L. R., 16 All., 165.
(4) I. L. R., 6 Bom., 266.
(5) I. L. R., 8 Mad., 361.

1889 was proved, succeed in getting a decree for the share of the property in suit which they assigned to the plaintiff No. 3, nor could the plaintiff No. 3, Sheikh Akbar Ali, succeed in getting a decree for his share of that property, unless he proved, not only the title of the other plaintiffs to the property down to the assignment of 1889, but also the assignment to himself. The three plaintiffs are no doubt jointly interested in defeating the defendants, but they have not a joint cause of action.

We were much pressed in argument on behalf of the plaintiffs with the decision of this Court in *Ram Sewak Singh* v. *Nakched Singh* (1). No doubt if the decision is to be applied generally and not with regard to the particular facts of the case then before the Court, it would support the contention on behalf of the plaintiffs that there has been no misjoinder here. That decision, however, referred to a state of facts in which all the several plaintiffs having separate interests, brought one common suit for possession of a certain share of property which had belonged to what had been a joint Hindu family.

We assume that the Legislature did not intend the concluding paragraph of section 31 or the first paragraph of section 90, Act No. XII of 1879, directly or indirectly to prohibit the joining by Hindu or Muhammadan heirs in one suit of their causes of action in respect of what had been the property of their ancestor or of the family. In these Provinces it has always been the practice to allow Hindu or Muhammadan heirs, even where their interests were several, to join in one suit for the recovery of property which had belonged to a common ancestor through whom title was claimed. Convenience commends the permission of such a practice, and, although the judgment of one of the learned Judges in the case to which we are referring appears to go beyond the necessity of maintaining that practice, we regard the decision in that case as necessarily confined to the maintenance of the practice to which we have referred and to go no further. We consider that in that case that judgment was right, and we express no dissent from it. There

(1) I. L. R., 4 All., 261.

never could have been any doubt that the members of a joint Hindu family were and are entitled to sue jointly in respect of joint property. The present is a totally different case.

In this case the alleged assignee of a moiety of the interest of the plaintiffs Nos. 1 and 2 in the property in suit joined with them in the suit. This course, so far as these Provinces are concerned, is quite a modern course of procedure, which has been recently adopted, obviously with the intention of evading a decision between a trafficker in litigation and his assignor as to their mutual rights in the transaction. Previously, when a trafficker in litigation undertook, in consideration of getting a share in the proceeds of the litigation to finance the claimant's suit, he ran the chance of having allowed to him, not an exorbitant share in the property recovered, but a just recompense for the money expended by him in the litigation.

Recent decisions of this Court, one of which on appeal before Her Majesty in Council was upheld, have made it apparent to traffickers in litigation that, if they are left to bring suits against the other contracting party to enforce their contracts, they must prove that the contracts were not gambling contracts and were not unjust and inequitable; hence has arisen the attempt to avoid such results by the trafficker in litigation taking an assignment of a moiety or other part of the property in dispute and joining himself as a plaintiff with persons whose litigation he had agreed to finance. We do not prejudge any dispute that may arise between the plaintiffs in this case *inter se*, but we cannot help noticing the fact that no portion of the alleged consideration money for the assignment of 1889 was paid in the presence of the Registrar.

We hold that the cause of action of the plaintiffs Nos. 1 and 2 was distinct from the cause of action of the plaintiff Sheikh Akbar Ali, and that the plaintiffs were not jointly interested in the cause of action alleged in the plaint, and that there has been misjoinder.

We further hold that the three plaintiffs were not entitled jointly to bring or maintain one suit in respect of their separate causes of actions. We set aside the decree below, and direct the

Court below to perform the duty which that Court ought to have performed under section [illegible] of Act No. XIV of 1882; that is to say, we direct the Court below to return the plaint to the plaintiffs for amendment, so that the plaintiffs may elect which of them are, or is, to continue as plaintiffs or plaintiff in the suit. This appeal is allowed with costs in this Court and in the Court below.

Appeal decreed.

1895
December 16.

Before Mr. Justice Blair and Mr. Justice Burkitt.

SHIRIN BEGAM AND ANOTHER (DECREE-HOLDERS) *v.* AGHA ALI KHAN AND OTHERS (JUDGMENT-DEBTORS).*

Civil Procedure Code, section 311—*Execution of decree—Application to set aside sale in execution—Plea to jurisdiction of executing Court not admissible in an application under section* 311.

Held that in an application under section 311 of the Code of Civil Procedure to set aside a sale in execution of a decree it is necessary for the applicant to show not only that there has been a material irregularity in publishing or conducting the sale but also that substantial injury had been sustained in consequence of such material irregularity. *Arunachellam* v. *Arunachellam* (1) and *Tasadduk Rasul* v. *Ahmad Hasan* (2).

Held also that in such an application it is not competent to the applicant to raise, nor to the Court to entertain, any plea to the jurisdiction of the Court executing the decree, as, for example, a plea that the property sold, or part of it, was ancestral and ought to have been sold in accordance with the provisions of section 320 of the Code.

THE facts of this case are fully stated in the judgment of Burkitt, J.

Pandit *Sundar Lal* and Pandit *Moti Lal* for the appellants.

Munshi *Ram Prasad* for the respondents.

BURKITT, J. This is an appeal from an order of the Subordinate Judge of Cawnpore setting aside a sale of certain immovable property. It appears that in execution of a decree held by the appellants a large number of villages belonging to the respondents were sold by auction on the 20th of July 1894. On the 15th of the following month the respondents, judgment-debtors, applied to the execution Court to have the sale set aside under the

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* First appeal No. 54 of 1895, from an order of Maulvi Zainulab-din, Subordinate Judge of Cawnpore, dated the 23rd April 1895.

(1) L. R., 15 I. A., 171. (2) I. L. R., 21 Calc., 66.