1887

PROBODH CHUNDER MULLICK v. DOWEY.

pending, and in terms of s. 479 security must be given within a week for the amount of the claim.

Application granted.

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

Attorney for defendant: Mr. *Carruthers.*

H. T. H.

Before Mr. Justice Macpherson.

NECKRAM DOBAY *v.* THE BANK OF BENGAL.*

1887 *June* 22.

Practice—Interrogatories—Refusal to answer—Particulars of damage—Civil Procedure Code (Act XIV of 1882), ss. 125, 127.

The plaintiff alleged that the defendant Bank improperly and without notice, and in violation of an agreement, sold some Government promissory notes, which had been deposited as security for certain loans, and claimed a specified sum as damages or in the alternative a decree for an account. The defendant Bank denied the alleged agreement, and asserted that the notes had been sold after due notice and on failure of the plaintiff to comply with the terms on which the loans were made.

Interrogatories were administered for the examination of the plaintiff, and amongst them one in the following terms:—

"State how your estimate of damages to the amount of Rs. 1,30,000 mentioned in the eighth paragraph of the plaint is arrived at?"

Upon the plaintiff declining to answer that interrogatory the defendant Bank applied on notice for an order under s. 127 of the Code of Civil Procedure requiring him to answer it fully.

Held, that the plaintiff was not bound to answer it.

If, on the one hand, it was intended to elicit the principle on which the damages were estimated by the plaintiff, the defendant was not entitled to discovery on that point. If, on the other hand, it was sought to elicit an account of the transactions between the parties, it was unnecessary, as the transactions were within the knowledge of the defendant Bank; and if it were not, then the enquiry was premature, as the question whether there had been any wrongful act committed and whether the plaintiff was entitled to any damages should be first determined.

IN this suit the plaintiff, a dealer in Company's paper, claimed Rs. 1,30,000 damages (or in the alternative a decree for an account) on certain loan transactions between himself and the defendant, the Bank of Bengal. As a part of his case the plaintiff set up a verbal arrangement between himself and an officer of the Bank,

* Original Civil Suit No. 40 of 1887.

1887

NECKRAM DOBAY v. THE BANK OF BENGAL.

that the Bank was to charge him 1 per cent. less interest than the usual rate, and that it was not to call for prompt or heavy margins, and he further alleged that the Bank had improperly and without reasonable notice sold certain Government paper deposited with it for the purpose of securing loans. The Bank denied the verbal arrangement and paid Rs. 326-7-4 into Court in full satisfaction of all claims the plaintiff might have against it.

Interrogatories were administered to the plaintiff with reference to the terms of the alleged arrangement and the time, place and circumstances under which it was made, and also with reference to an offer of 5 lacs alleged to have been made by the plaintiff. The fifth and last interrogatory was as follows: "Fifth: State how your estimate of damages to the amount of Rs. 1,30,000 mentioned in the eighth paragraph of the plaint is arrived at."

The plaintiff answered all the others, but declined to answer this interrogatory on the following grounds: "I am advised that the matter enquired after is not sufficiently material at the present stage of this suit; that it is in effect calling upon me to set out accounts, and is therefore premature; and that it seeks for discovery of the evidence which I intend to produce in support of my claim." The defendant Bank accordingly now applied on notice for an order under s. 127 of the Civil Procedure Code requiring the plaintiff to answer fully the fifth interrogatory.

Mr. *Stokoe* appeared in support of the application for the defendant Bank.

Mr. *Sale* for the plaintiff.

Mr. *Stokoe*.—The plaintiff is bound to answer this interrogatory. The case is similar to that of *Dobson* v. *Richardson* (1), where a similar interrogatory was held good. There is no procedure in this Court to obtain particulars except by filing interrogatories, and none of the objections which can be taken under s. 125 apply to the present case. We say we are entitled to have particulars of damage.

Mr. *Sale* (*contra*).—There is no precedent for this application. The interrogatory is vague, and all the necessary particulars are to be found in the plaint and schedule annexed. It is not alleged that our plaint is insufficient, but if that is contended then the

(1) L. R., 3 Q. B., 778.

machinery of interrogatories should not be applied to amending a deficient plaint. If the defendant Bank is dissatisfied with the plaint it has its remedy. But the object of this application is to get at our evidence. Now the plaint shows that we have a sufficient case for damages. All the circumstances are set out, and at the hearing we shall show the fact of the agreement, the fact of the breach and the fact that we have been overcharged. The measure of our damages being a question of law the defendant Bank should not be allowed to extract from the plaintiff the principle upon which he has assessed his damages. It might as well ask at this stage what authorities we shall cite in support of that principle. Nor can we be required now to inform the defendant Bank as to how the plaintiff intends to shape his case at the hearing. Some of the cases say that, where the question is one of amount, the defendant is entitled to ask for particulars, but that is only where contract or tort is admitted. In such a case information is given to enable the defendant to settle the suit where the parties are anxious to avoid a trial and the defendant is desirous of paying a sum of money into Court to satisfy plaintiff's claim. [*See* Hare on Discovery, p. 256, 2nd Ed.; *Wright* v. *Goodlake* (1); *Jourdain* v. *Palmer* (2); *Horne* v. *Hough* (3).] No such case has been made here, and the matter sought to be imparted is irrelevant as it refers only to our claim. *Dobson* v. *Richardson* (4) is distinguishable from the present case owing to the particular nature of the interrogatories in that case. In *Lyon* v. *Tweddell* (5) it was held that a defendant may not ask for an account of damages, if those damages are dependent upon an account, because such an application would be premature. This is a fishing application and ought to be refused.

Mr. *Stokoe* in reply.—No answer is made to our case; interrogatories in reduction of damages are clearly relevant. We ask on what principle have their damages been assessed, and we are entitled to be told. (*See* Sichel and Chance, on Interrogatories and Discovery, p. 45; Leech on Practice of Civil Courts, Ed. 1865, p. 425.)

(1) 3 H. & C., 540.
(2) L. R., 1 Ex., 102.
(3) L. R., 9 C. P., 135.
(4) L. R., 3 Q B., 778.
(5) L. R., 13 Ch. Div., 375.

1887

NECKRAM DOBAY v. THE BANK OF BENGAL.

The following judgment was delivered by the Court:—

MACPHERSON, J.—I think the plaintiff is not bound to answer this interrogatory.

The plaint alleges that the defendant improperly and without notice, and in violation of an agreement, sold some Government promissory notes which had been deposited as security for certain loans.

The defence is a denial of the alleged agreement and an assertion that the notes were sold after due notice and on failure of the plaintiff to comply with the terms on which the loans were made.

The parties are therefore at issue as to the plaintiff being in a position to recover any damages at all.

If the interrogatory is intended to elicit the principle on which the damages are estimated, the defendant is not entitled to discovery on the point. This is a matter relating exclusively to the plaintiff's case, and, if the wrongful acts are established, as to the way in which he intends to shape it as regards the assessment of the damages; this the plaintiff is not bound to disclose beforehand. If the interrogatory is intended to elicit an account of the transactions between the parties, it is unnecessary as the transactions are all within the knowledge of the defendant Bank, which sold the notes which were deposited with them. But, even if it did not, the enquiry is premature, as the question whether there has been any wrongful act committed and whether the plaintiff is entitled to any damages must be first determined. The principle deducible from the English cases cited seems to be that, where the question is simply as to the amount of damages to be awarded and the defendant wishes to satisfy the demand, he is entitled by means of interrogatories to elicit all the information which will enable him to do so. If there is a contest as to the right to damages it is not very clear whether interrogatories directed to the amount of such damages would be allowed. In the present case the points on which the claim is based are all known to the defendant Bank, and I think the defendant is not bound to furnish any other information than he has given. The application is refused with costs.

Application refused.

Attorney for plaintiff: Mr. *H. H. Remfry.*

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

H. T. H.