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the law on the subject, there being no misjoinder of causes of action by the plaintiff in this suit. This plea must fail. It is quite clear from what has been stated above that the two plaintiffs had different causes of action, and that therefore they could not join themselves as plaintiffs in one and the same suit. The appeal therefore fails and is dismissed with costs.

At the same time we take this opportunity of dealing with the case in revision and of pointing out to the Court below that the order passed on the 17th of November, 1902, was an order which the Court had no jurisdiction to pass, inasmuch as after the settlement of issues the power to amend a plaint is, by section 53 of the Code of Civil Procedure, with the Court alone. We, therefore, set aside the order passed on the 17th of November, 1902. The Court may deal with the case under clause (c) of section 53, or, if moved thereto, under section 373, and may consider whether it should grant the plaintiffs permission to withdraw, or pass such order as may be in accordance with law.

Appeal dismissed.

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December 1.

Before Mr. Justice Banerji.

MUHAMMAD SADDIQ AHMAD (DEFENDANT) *v.* PANNA LAL (PLAINTIFF).*

Civil Procedure Code, section 424—*Act No. V of* 1861 *(Police Act), section* 42—*Suit against Police officer for damages for wrongful confinement—Notice—Action of police officer malicious.*

One Panna Lal brought a suit against a Sub-Inspector of Police claiming damages for wrongful confinement and other matters. It was found that the Sub-Inspector did not purport to act in good faith in pursuance of the law, but that he took advantage of his position as a police officer to commit illegal and tortious acts, maliciously and without cause. *Held,* that under these circumstances the defendant was not entitled to receive notice of suit either under section 42 of the Police Act, 1861, or under section 424 of the Code of Civil Procedure, and the plaintiff's suit was not liable to dismissal for lack of such notice. *Shahebzadee Shahunshah Begum* v. *Fergusson* (1) and *Jogendra Nath Roy Bahadur* v. *Price* (2), referred to.

THE suit out of which this appeal arose was brought by the plaintiff against a Sub-Inspector of Police, the plaintiff

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* Second Appeal No. 493 of 1902, from a decree of Rai Bahadur Babu Baijnath, Subordinate Judge of Agra, dated the 5th of March, 1902, confirming a decree of Babu Baidya Nath Das, Officiating Munsif of Agra, dated the 15th of October, 1901.

(1) (1881) I. L. R., 7 Calc., 499. (2) (1897) I. L. R., 24 Calc., 584

claiming damages on the allegations that the Sub-Inspector had, on account of enmity to the plaintiff on account of his having given evidence for the defence in a case in which the Sub-Inspector was interested, wrongfully searched the plaintiff's house, and had also kept him for some hours in confinement at the thana and had publicly used abusive language to him. The damages were laid at Rs. 400, out of which the Court of first instance (Munsif of Agra) gave the plaintiff Rs. 200 and full costs. The defendant appealed, mainly on the ground that the notice to which he was, as he contended, entitled either under section 424 of the Code of Civil Procedure or under section 42 of the Police Act, 1861, had not been served, and also on the merits. The lower appellate Court (Small Cause Court, Judge of Agra with powers of a Subordinate Judge) found that the acts alleged against the defendant had been done by him not in the exercise of his official duty but maliciously and for the reason assigned by the plaintiff, and that therefore the notice prescribed by the Acts in question was not necessary. The Court accordingly affirmed the decree of the Munsif and dismissed the appeal. From this decree the defendant appealed to the High Court, again urging the plea of that the requisite notice had not been given.

Dr. *Satish Chandra Banerji* (for whom Babu *Sarat Chandra Chaudhri*), for the appellant.

The Hon'ble Pandit *Madan Mohan Malaviya*, for the respondent.

BANERJI, J.—The appellant, who is a Sub-Inspector of Police, searched the house of the plaintiff, dragged him to the thana, detained him there and kept him in confinement for several hours. For this the plaintiff brought the suit, which has given rise to this appeal, to recover damages. The Courts below have found that in acting as he did the defendant was actuated by malice. The Court of first instance decreed a part of the plaintiff's claim and awarded to him damages for mental distress. The lower appellate Court has affirmed the decree.

The first and main contention raised in this appeal on behalf of the appellant is that he was entitled to notice under section 424 of the Code of Civil Procedure and section 42 of the Police

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Act, V of 1861. Section 424 provides that "no suit shall be instituted against a public officer in respect of an act purporting to be done by him in his official capacity," until the expiration of two months next after notice in writing has been given to him. Section 42 requires the giving of a month's notice before the commencement of an action against a person for "anything done or intended to be done under the provisions of the Act." If in this case the defendant acted or intended to act under the provisions of the Police Act, or if in the discharge of his duties as a public officer, he, through ignorance or inadvertence did something which was illegal or improper, he would have been entitled to the notice required by the Police Act or by the Code of Civil Procedure. The law on the subject was pointed out in *Shahebzadee Shahunshah Begam* v. *Fergusson* (1). In the present case it has been found that the defendant did not purport to act in good faith in pursuance of the law, but took advantage of his position as a police officer to commit illegal and tortious acts, maliciously and without cause. He was not therefore entitled to any notice under the sections referred to above. The case of *Jogendra Nath Roy Bahadur* v. *Price* (2), relied on by the learned vakil for the appellant is distinguishable. There the officer concerned did the act complained of in his official capacity. He was, therefore, held entitled to notice. The main pleas in the appeal therefore fail. In this case the damages awarded appear to have been so awarded for the malicious search of the plaintiff's house and for wrongful confinement and not for verbal abuse. Besides, the imputations found to have been made upon the character of the plaintiff were imputations of an offence. The words used were consequently actionable *per se*. That being so, the plaintiff was entitled to recover damages without proving special damage. I accordingly dismiss the appeal with costs.

Appeal dismissed.

(1) (1881) I. L. R., 7 Calc., 499. (2) (1897) I. L. R., 24 Calc., 584.