must be set aside. I would point out that if the Collector of the district had taken action under section 476 of the Criminal Procedure Code and had made a complaint, then this Court would have had no jurisdiction to interfere with his order. At first I was under the impression that Mr. Alexander had acted in his capacity as the Presiding Officer of a Revenue Court of appeal, but I am faced with the clear statement in his order that he is acting in his capacity as District Magistrate and not as a Collector. I therefore allow this application. I set aside the order of the District Magistrate. It will be open to the Collector of the district to take any action which he may deem necessary in the matter according to law.

1917

EMPEROR v. RAM SAHAI.

Application allowed.

REVISIONAL CIVIL.

Before Mr. Justice Walsh.

IN THE MATTER OF THE PETITION OF BISHESHAR NATH.*

1917 *December*, 19.

Civil Procedure Code (1908), *order VI, rule 14—Procedure—Plaint—Distinction between signature of plaint and authorization of suit—Suit filed on behalf of a person in jail.*

Order VI, rule 14, of the Code of Civil Procedure, which requires a pleading to be signed by a party, is merely a matter of procedure. It is the business of the Court to see that this provision is carried out. It is also the business of the Court to see that a suit is authorized by the plaintiff. The authority for the bringing of a suit is a question of principle. But where a suit is duly authorized, the proper signing of the plaint is a matter of practice only, and if a mistake or omission has been made, it may be amended at any time. *Basdeo* v. *John Smidt* (1), *Rajit Ram* v. *Katesar Nath* (2) and *Cropper* v. *Smith* (3) referred to.

The mere fact that the signing of a plaint by or on behalf of a plaintiff who was in jail at the time might have involved a breach of jail regulations has nothing to do with the question of the validity or invalidity of the plaint.

THE facts of this case were as follows :—

A suit was brought by one Chajju Mal against Jas Ram upon a promissory note for Rs. 150 alleged to have been given by the defendant on the 31st of December, 1913. The plaint was filed

* Civil Revision No. 178 of 1917.

(1) (1899) I. L. R., 22 All., 55. (2) (1896) I. L. R., 18 All., 396.

(3) (1884) 26 Ch. D., 700.

1917

IN THE MATTER OF THE PETITION OF BISHESHAR NATH.

on the 22nd of December, 1916, and the claim was for Rs. 216-14. The written statement raised objection to the validity of the plaint, the main ground being that the plaintiff was in jail at the time the plaint was signed, and that it had been signed without permission of the jail authorities having been first obtained as required by the jail regulations. Various witnesses were examined, but the one witness whom the Munsif refused to examine on this point was the plaintiff himself, although he was in the witness-box. The Munsif appeared to consider that both the plaint and the *vakalatnama* filed by the vakil who appeared for the plaintiff were documents of a highly suspicious nature, and that, if not an actual forgery, the plaint was at any rate signed in circumstances which involved a breach of the jail regulations, and that the plaintiff's vakil was a party to these proceedings. He accordingly passed an order directing the vakil to show cause why he should not be committed to the criminal court under section 476 of the Code of Criminal Procedure, and also directing him to show cause why proceedings should not be taken against him under section 14 of the Legal Practitioner's Act. Against this order the present application in revision was made to the High Court.

The Hon'ble Pandit *Moti Lal Nehru*, The Hon'ble Dr. *Tej Bahadur Sapru*, Babu *Satya Chandra Mukerji* and Munshi *Gulzari Lal* for the applicant.

Mr. *A.E. Ryves*, for the Crown.

WALSH, J. :—These are two applications by Bisheshar Nath, High Court Vakil, practising at Ghaziabad, against an order of the Munsif of Ghaziabad, which was really a judgement in a civil suit, (*a*) directing him to show cause why he should not be committed to the criminal court under section 476 of the Criminal Procedure Code, and also (*b*) directing him to show cause why proceedings should not be taken against him under section 14 of the Legal Practitioner's Act.

The circumstances of the case are unusual. A suit was brought in the court of the Munsif by one Chajju Mal against Jas Ram upon a promissory note alleged to have been given by the defendant on the 31st of December, 1913, for Rs. 150, with interest at Re. 1-4 per cent. per mensum. The claim was for Rs. 216-14,

1917

IN THE MATTER OF THE PETITION OF BISHESHAR NATH.

only. The plaint was filed about the 22nd of December, 1916, and the claim would therefore have been barred in a few days.

Paragraph 2 of the written statement alleged that the plaintiff was in jail, that the suit had not been presented on his behalf, and that the permission of the jail authorities had not been given to the plaintiff's signature. The following issue was framed :— I. "Whether the suit was properly and duly filed on behalf of the plaintiff and is maintainable or not." The Munsif describes it as the most important issue in the case.

Bakhtawar Singh, brother-in-law of the plaintiff, was called and swore that he was asked by the plaintiff's wife, in consequence of a letter written by the plaintiff from jail, to file the suit, and he accordingly instructed the applicant, Bisheshar Nath. Hardwari Lal, the plaintiff's munim, called by the defendant, attempted to identify the plaintiff's signature, but he was not certain about it. A jailor was called by the defendants who contradicted the statement of Bakhtawar Singh that the plaint was signed by the plaintiff in the presence of the jail authorities, though he stated that about the date in question, two or three people called to see Chajju Mal who was at work outside the jail, and the signature might have been obtained in the jailor's absence.

These witnesses, whose evidence was recorded on the 14th of February and the 13th of April, are the only relevant ones upon the point as to the manner in which the plaintiff's signature was obtained.

On the 19th of April, the plaintiff himself was put into the box and was asked the question "Who signed the plaint in this case?" After a highly technical discussion about the *onus* of proof which I confess is beyond my comprehension, the question was disallowed. So that issue No. 1 was decided after the deliberate refusal to hear the evidence of the principal person concerned who was in a position to speak to it. To talk of forgery under such circumstances is of course out of the question.

I will assume that the plaintiff's signature was appended so as to constitute a breach of the jail regulations. I will assume further, though it is by no means proved, that he did not write it himself, although he had authorized the suit, and that although

1917

IN THE MATTER OF THE PETITION OF BISHESHAR NATH.

he might have authorized some one to sign his own name, he was prepared, or badly advised, under a mistaken fear of the consequences of telling the truth, to commit perjury by swearing that a signature written by some one for him was written by himself. There is not, so far as I can see, in the absence of a repudiation of his signature by the plaintiff himself, a scrap of evidence of forgery, and not a shadow of a suggestion in the evidence that the present applicant knew it was forged.

The learned Munsif appears to have felt the difficulty himself. He says the signatures of the plaintiff to the plaint and *vakalatnama* were "most probably forged." He further concludes that the applicant was guilty of gross negligence in not concluding that there had been a breach of the jail regulations. It is impossible to reconcile this finding with the ultimate conclusion that the applicant produced two documents in court which he either knew or had reason to believe were forged. Without considering whether the Munsif had jurisdiction to deal with any disciplinary question under the Legal Practitioner's Act, or whether the occasion was one in which, in any event, he ought to have exercised the power given by section 476 of the Criminal Procedure Code, I hold that on the evidence before him the course which the Munsif took with the vakil, the present applicant, had no foundation in fact and was an unwarrantable abuse of his power, and an irregular exercise of jurisdiction.

As, however, the judgement in this case raises several points of practical importance and the whole proceedings evidence a lamentable waste of judicial time, and a fruitless expenditure of costs, all of which apparently will fall upon one or another of these two unfortunate litigants, I think it desirable to deal with the other points raised.

The Munsif has entered into a learned and exhaustive examination of the Jail Manual and Regulations. These are wholly irrelevant. He says they have the force of law. This does not mean that they alter the general law. A plaint signed or a suit authorized, by a man in jail, is just as good as any other plaint or suit, however many jail regulations are broken. The breach of regulations whether by the prisoner, his friends or

pleader, are matters for the Jail authorities, or the Local Government, or whoever has the duty of enforcing them or punishing their breach. They no doubt have the force of law, but they cannot destroy a cause of action or invalidate a plaint. The second part of the second plea in the written statement which raised this point ought to have been struck out and no issue should have been framed thereon.

Order VI, rule 14, which requires a pleading to be signed by a party, is merely a matter of procedure. It is the business of the court to see that this provision is carried out. It is also the business of the court to see that a suit is authorized by the plaintiff. Of course *if it is not*, the suit ought to be dismissed and the persons responsible for it made to answer for their conduct. The authority for the bringing of a suit is a question of principle. But where a suit is duly authorized, the proper signing of the plaint is a matter of practice only, and if a mistake or omission has been made, it may be amended at any time. Sections 151 and 153, which the courts below seem too often to ignore, were plainly intended for such cases. And the latter part of order VI, rule 14, enabling a person duly authorized by the party when the party is unable to sign the pleading himself to sign for him makes this clear. In the present case I see no reason why Bakhtawar Singh could not have signed for the plaintiff. I delivered a judgement recently myself upon this very point where I endeavoured to make it clear. But there is abundant authority, if any were required, for such an obvious proposition; cf. *Basdeo* v. *John Smidt* (1) decided in this Court many years ago.

But the most unfortunate incident of the whole case is the proceeding of the 19th of April, when the plaintiff presented himself in the box, and the Munsif disallowed a most obvious, necessary and proper question. Why the Munsif did not then realize the position, and put an end to further waste of time and invite the plaintiff to sign the plaint and *vakalatnama* then and there, I am at a loss to understand. The fact that a fresh suit would probably be barred by limitation would seem an additional reason for doing so.

(1) (1899) I. L. R., 22 All., 55.

1917

IN THE MATTER OF THE PETITION OF BISHESHAR NATH.

I have not thought it necessary to discuss the high technicalties about the attestation of the *vakalatnama*. All defects might and ought to have been cured by the exercise of a little common sense, and may, in my opinion, still be cured if the suit is remanded or the court which hears the suit in appeal does what the Munsif might and ought to have done. *Vide Rajit Ram* v. *Katesar Nath* (1).

It cannot be impressed too often upon the inferior courts what BOWEN, L. J., said in *Cropper* v. *Smith* (2) :—"The object of courts is to decide the rights of parties, and not to punish them for mistakes which they make in the conduct of their cases, by deciding otherwise than in accordance with their rights. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy."

Of course where it is sought to abuse the process of the court, or to overreach the other party by some fraud, it is another matter.

It is to be observed that, although according to the Munsif's judgement the defendant admitted his signature to the note so that the *onus* was upon him, and the plaintiff gave evidence and the defendant did not, but relied upon a discharged servant of the plaintiff, the Munsif dismissed the suit on the merits. If he was right in so doing there was the less reason for this elaborate expenditure of time and money over a trivial matter of Rs. 200. The defendant and his representatives are partly to blame for this unfortunate miscarriage by having raised the question in their plea, apparently because the plaintiff, who was a former employer of the defendant, had been sent to jail. If there was a good defence to the suit, it was superfluous. If there was no defence, it was irrelevant to any question, unless the suit had not been authorized by the plaintiff. This, which is the sole question of importance, has not been decided at all.

I will merely add that it would in my opinion be better, as a general rule, where the court has reason to think that there has been any breach of professional etiquette or any matter calling for the exercise of disciplinary powers, in the conduct of the pleader or advocates in the case, to decide the merits, and reserve

(1) (1895) I. L. R., 18 All., 396. (2) (1884) 26 Ch. D., 700.

1917

IN THE MATTER OF THE PETITION OF BISHESHAR NATH.

any such question for further consideration after the disposal of the suit. If there were no other reason for this course, and there are several in my judgement, it is in any case not a matter which concerns the parties, or one in respect of which they ought to be penalized either by prolonging the suit or increasing the costs. This case seems to have occupied the time of the court on six days, including the framing of the issues and the delivery of judgement, and lasted for more than six months. I direct the order of the Munsif, so far as it affects the applicant, to be cancelled.

Order set aside.

Before Mr. Justice Walsh.

1917
December, 22.

IN THE MATTER OF THE PETITIONS OF KALKA PRASAD AND OTHERS.*

Act No. XVIII of 1879 (Legal Practitioners' Act), section 36—Touts—Procedure to be followed by a court taking action under section 36—Revision—Statute 5 and 6 Geo. V, Ch. 61, section 107—Evidence—Criminal Procedure Code, section 117 (3).

It is competent to the High Court to entertain an application in revision against an order passed by a District and Sessions Judge under section 36 of the Legal Practitioners' Act, 1879, and this without invoking the aid of the Government of India Act, 1915, section 107. *In the matter of the petition of Madho Ram* (1), *In the matter of the petition of Kedar Nath* (2), *Babu Sahib* v. *the District Judge of Madura* (3) and *Hari Charan Sircar* v. *the District Judge of Dacca* (4) referred to.

In a proceeding under section 36 of the Legal Practitioners' Act, 1879, the court may properly apply, as regards the nature of the evidence adducible, the provisions of section 117 (3) of the Code of Criminal Procedure.

Where a person's name has once been included in a list framed under section 36 the mere fact that the exhibition of such list in any particular court room is discontinued has no effect on the validity of the original order.

AT the instance of the Bar Association of Meerut the District Judge instituted proceedings under section 36 of the Legal Practitioners' Act, 1879, against several persons alleged to be touts, and on the 4th of May, 1917, he passed an order directing that the names of six persons, Abdur Rahim, Iftikhar Husain, Nisar Ahmad, Rup Chand, Abdul Karim and Kalka Prasad, along with certain others, should be posted and put on a list of touts according to the provisions of the section. The persons

---

*Civil Revision No. 170 of 1917.

(1) (1899) I. L. R., 21 All., 181. (2) (1903) I. L. R., 31 All., 59.
(3) (1903) I. L. R., 26 Mad., 593. (4) (1910) 11 C. L. J., 513.