

APPELLATE CIVIL.*Before Wort and Varma, JJ.*

SRINIVAS MULL

1938.

January, 27,

v.

SECRETARY OF STATE FOR INDIA IN COUNCIL.*

Code of Civil Procedure, 1908 (Act V of 1908), section 80—notice, requisites of—cause of action, statement of.

Where a notice purporting to be under section 80 of the Code of Civil Procedure, among other matters, stated as follows :—

“ That the Deputy Magistrate purporting to act for the District Magistrate of Monghyr has served a notice upon my client, dated the 27th of July, 1933, making a demand of Rs. 2,500-12-6 as an apportioned amount payable by him for upkeep of the additional police force there.

.....

“ That my client asserts that the assessment of costs against him is illegal and *ultra viros* and, secondly, the sum assessed is too high,”

and objection was taken that the notice was not proper as all the details had not been given, *held* that the notice did sufficiently comply with the requirements of the section.

To state a cause of action it may be sufficient to give a legal description by which a particular cause of action is known, such as damages for breach of contract and damages for negligence.

Appeal by the plaintiffs.

The facts of the case material to this report are set out in the judgment of Wort, J.

Phulan Prasad Varma, for the appellants.

Government Pleader, for the respondent.

WORT, J.—This appeal arises out of an action in which the plaintiffs claimed from the Secretary of State a sum of Rs. 2,500 which they contended had

*Appeal from Appellate Decree no. 242 of 1936, from a decision of Babu Manindra Nath Mitra, Subordinate Judge of Monghyr, dated the 30th of January, 1936, confirming a decision of Maulavi Shamsuddin, Munsif of Monghyr, dated the 14th of August, 1935.

1938. been illegally assessed upon them, the Government purporting to act under section 15 of the Police Act, 1861, as amended by the Act of 1922. The action was dismissed *in limine* as it was held by the courts below that section 80 of the Code of Civil Procedure had not been sufficiently complied with. The contention in support of that decision by the learned Government Pleader is that by the notice purporting to be under section 80 the plaintiffs had not sufficiently stated their cause of action.

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The case made out in the plaint, it appears, is shortly this, that the Deputy Magistrate purporting to act for the District Magistrate under sub-section (4) of section 15 had made the apportionment and issued the notice, whereas the section demanded an apportionment and notice by the Magistrate of the district. Now, by the notice which the plaintiffs gave under section 80 they stated as follows in paragraph 5 :

“ That the Deputy Magistrate purporting to act for the District Magistrate of Monghyr has served a notice upon my client, dated the 27th of July, 1933, making a demand of Rs. 2,500-12-0 as an apportioned amount payable by him for upkeep of the additional police force there.”

The learned Government Pleader relying on a number of well-known decisions on the question of ‘ what is a cause of action ’ has contended that what was necessary in the notice was a statement of the facts which went to make up the plaintiffs’ cause of action. The decision most often quoted with regard to what is meant by the expression ‘ cause of action ’ is in *Cooke v. Gill*⁽¹⁾ where Bovill, C. J. and two other Judges were considering the question whether a certain cause of action arose within the jurisdiction of the Lord Mayor’s Court of the City of London, and in the course of the judgment by Brett, J. this statement was made: “ Cause of action has been held from the earliest time to mean every fact which is

(1) (1873) 8 C. P. 107.

material to be proved to entitle the plaintiff to succeed". A similar statement of the law was made in the case of *Read v. Brown*⁽¹⁾ by Lord Esher, M. R. where the same question came up for decision—in what place the cause of action arose. There are a number of decisions in India following the decisions to which I have just referred. But it must be remembered that what was being discussed there was not the expression "stating the cause of action", but what was the cause of action. To state a cause of action it may be sufficient to give a legal description by which a particular cause of action is known, such as, damages for breach of contract and damages for negligence. But even supposing that the contention of the learned Government Pleader on this point is to be supported, it will be difficult, in my judgment, to hold that in this case the plaintiffs have not sufficiently stated their cause of action. There are a number of paragraphs in their notice under section 80 which must under the circumstances be held to be irrelevant. But paragraph 5 thereof read together with a later paragraph (paragraph 11) to the effect

"that my client asserts that the assessment of costs against him is illegal and *ultra vires* and secondly the sum assessed is too high,"

must be held in my opinion to comply with the provisions of section 80 of the Code of Civil Procedure. Whether the plaintiffs make out, in the action when it is tried, what they have asserted in their notice under section 80 and in their plaint is entirely another matter. But although paragraph 5 of the notice may be worded loosely, I think it is impossible to contend that there is not a sufficient indication there, that what is complained of is that the Deputy Magistrate was purporting to act under section 15 of the Police Act for the District Magistrate, and that act by the Deputy Magistrate was illegal and *ultra vires*, and therefore the plaintiffs were entitled to recover under the notice the money paid by them

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I purposely omit to give any expression of view as to the merits of the plaintiffs' case; but on the question whether section 80 had been complied with in the service of notice by the plaintiffs to the Secretary of State, I unhesitatingly come to the conclusion that there had been sufficient compliance.

For those reasons I would hold that the judgments of the courts below must be set aside and the case remanded to be heard and determined according to law on its merits. Costs will abide the hearing in the court below.

VARMA, J.—I agree. This second appeal arises out of suit no. 233 of 1934 before the Second Munsif of Monghyr. He dismissed this suit and his order was confirmed by the lower appellate court on the ground that notice under section 80 of the Code of Civil Procedure was not served on the Secretary of State. A notice was served but the courts below have held that it does not comply with the requirements of section 80 of the Code because all the details mentioned in the plaint have not been given in the notice. Section 80 of the Code of Civil Procedure makes the service of notice by the plaintiff on the Secretary of State imperative and the section also mentions as to what the notice should contain. The section says that the notice should be served stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims.

The question is, whether the notice that was served by the plaintiffs in this case satisfies the requirements of section 80 of the Code of Civil Procedure. We have looked into the notice and have come across two paragraphs in it which answer the question. Paragraph 5 states :

“That the Deputy Magistrate purporting to act for the District Magistrate of Monghyr has served a notice upon my client, dated

27th July, 1933 making a demand of Rs. 2,500-12-0 as an apportioned amount payable by him for upkeep of the additional police force there."

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Then after a few intervening paragraphs referring to the plaintiffs' position in life and the nature of business that he was carrying on, we come to paragraph 11 which runs as follows :

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" That my client asserts that the assessment of costs against him is illegal and *ultra vires* and secondly the sum assessed is too high "

VARMA, J.

Now, a notice, as I have already mentioned, under section 80 of the Code of Civil Procedure requires, amongst other things, the statement of the cause of action. The question is whether the notice out of which I have quoted paragraphs 5 and 11 has made a statement of the cause of action or not? " Cause of action " has been defined in various decisions and the definition that seems to have been generally accepted is that " A cause of action means every act which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to the judgment of the Court ". Now, I am of opinion on the various decisions mentioned by my learned brother and the accepted definition of " cause of action " that there is no doubt that the cause of action was indicated in the notice that was served by the plaintiffs.

As that is the only point on which the case has been disposed of I agree that this appeal should be allowed and the case remanded for decision on its merits.

J.K.

*Appeal allowed.**Case remanded.*