

ORIGINAL CIVIL.

*Before Mr. Justice Leach.*1935
Feb. 18.DIWAN BAHADUR A.M.M. MURUGAPPA
CHETTIAR *v.* N. C. GALLIARA AND OTHERS.*

Cause of action—Suit in High Court—Leave of the Court—Letters Patent, cl. 10—Rules and Orders, Original Side, Rules 8 and 25—Application to set aside leave—Limitation—Insolvency petition filed in District Court—Dismissal of insolvency petition by High Court on appeal—Injury to plaintiff's credit in Rangoon—Part of the cause of action in Rangoon.

The plaintiff, who was a banker and money-lender carrying on business in Rangoon and elsewhere, sued the defendants in the High Court to recover damages alleged to have been suffered as the result of the malicious filing of a petition in insolvency by the defendants against the plaintiff in the District Court of Mandalay. The insolvency petition was admitted by the District Court, but on appeal it was dismissed by the High Court. The plaintiff orally applied for and obtained the leave of the Court to file the plaint under cl. 10 of the Letters Patent and Rule 25 of the Rules and Orders relating to the Original Side of the Court. No notice was required to be and none was, in fact, issued to the defendants in respect of the application. More than a month later the defendants applied to the Court to set aside the order granting special leave on the ground that no part of the cause of action arose in Rangoon. The plaintiffs contended that the application was time-barred.

Held, that (1) Rule 8 did not apply in the case of an *ex-parte* order of this nature, and the Court had full power to revoke at any stage leave granted to a plaintiff to file a suit, on proper cause being shown ;

Kesrowji v. Luckmidas, I.L.R. 13 Bom. 404 ; *Secretary of State for India in Council v. Paliram*, I.L.R. 59 Cal. 150—*referred to*.

(2) the dismissal of the insolvency petition was part of the cause of action, and as the petition was dismissed by the High Court part of the cause of action did arise in Rangoon. Further the plaintiff pleaded that he had suffered injury to his credit and reputation in Rangoon. This was also part of the cause of action.

Cooke v. Gill, 8 C.P.D. 107 ; *Read v. Brown*, 22 Q.B.D. 128—*referred to*.

Clark for the plaintiff.

McDonnell for the 1st defendant.

K. C. Bose for the 2nd and 3rd defendants.

N. M. Cowasjee for the 4th defendant.

* Civil Regular Suit No. 608 of 1934.

LEACH, J.—The plaintiff in this suit is a banker and money-lender carrying on business in Rangoon, Madras and Southern India. On the 26th October, 1933, the defendants filed a petition in the District Court of Mandalay under the Provincial Insolvency Act, 1920, praying that the plaintiff and two other chettians might be adjudicated insolvents. The District Court admitted the petition, and called upon the plaintiff and the two other respondents to show cause why the application should not be granted. The plaintiff appealed to this Court and the appeal was successful, the petition being dismissed. The plaintiff avers that in filing the petition the defendants acted maliciously and without reasonable and probable cause and he has filed this suit to recover damages. Paragraph 6 of the plaint reads as follows :

"In consequence of the filing of the said petition its prosecution in Mandalay and the defence by the Defendants of the said Appeal in Rangoon the Plaintiff was injured in his credit and reputation and was hampered and injured in the transacting of his business as a Banker and money-lender and incurred expenses in defending himself against the said petition and has thereby suffered damage."

The plaint was filed on the 10th December, 1934. Special leave to file the plaint was granted under Clause 10 of the Letters Patent, as according to the plaint only part of the cause of action arose within the jurisdiction of this Court. Rule 25 of the Rules and Orders relating to the Original Side of the Court provides that an application for special leave to sue under Clause 10 of the Letters Patent may be made at the time the plaint is presented, without petition, provided that the grounds on which such application is made are set out with sufficient clearness in the body of the plaint. The application for leave to file the plaint in this Court was made orally when

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the plaint was presented. The rule does not require that notice of the application should be served upon the defendants, and no notice was given to them.

On the 21st of January the first defendant filed two applications. In the first application he asked that the order of the Deputy Registrar of the 10th of December, granting special leave to file the suit, should be referred to the Judge. In the second application he asked that the order should be set aside. On the 21st of January the second, third and fourth defendants filed applications, in which they also asked for the revocation of the order of the 10th December. All the applications came before the Deputy Registrar on the 9th February and he has referred them to me for decision.

I gather that the position taken up by the plaintiff before the Deputy Registrar was that the validity of the order of the 10th of December could not be questioned, as under Rule 8 a period of eight days only is allowed in which to challenge an order of this nature and all the applications had been filed after the eight days had expired. The fact that the defendants were in total ignorance of the order granting leave to file the plaint made no difference.

What the defendants are in effect asking is that the *ex-parte* order granting the leave to sue be revoked, and they contend that the provisions of Rule 8 have no application to a matter of this nature. I consider that there is substance in this contention. The same question arose in the case of *Kessowji Damodar Jairam v. Luckmidas Ladha and Khimji Jairam* (1), which was decided by the Bombay High Court. It was there held that where leave to bring a suit had been given to a plaintiff under Clause 12 of the Letters

Patent (which corresponds to Clause 10 of the Letters Patent of this Court) and a defendant objects and asserts that the Court has no jurisdiction, he is not bound to wait until the case comes on for hearing ; but may take out a Judge's summons calling on the plaintiff to show cause why the leave given should not be rescinded and the plaint taken off the file. The granting of such leave was neither a decree nor an order, and the period of limitation was that provided by Article 178 of the Limitation Act of 1877 (which corresponds to Article 181 of the present Limitation Act), namely three years. In the course of his judgment Scott J. observed :

"It is obviously possible that the leave contemplated by clause 12 of the Letters Patent may be granted *per incuriam*, and it may be necessary, after further consideration, that such leave should be withdrawn. The withdrawal may be necessary, because another jurisdiction furnishes the proper *forum* of the dispute as the place where the whole cause of action arose ; or this Court may itself feel bound to decline jurisdiction, on the ground that the parties are foreigners, and that only an infinitesimal part of the cause of action arises within its jurisdiction."

In that case the leave granted was rescinded on the ground that no material part of the cause of action arose in Bombay, and this decision was upheld on appeal.

It would be an astonishing state of affairs if a plaintiff could obtain *ex-parte* an order of this nature without the defendant having the right to challenge its correctness before the trial of the action. I hold that the Court has full power to revoke at any stage leave granted to a plaintiff to file a suit should it be shown that the order granting leave ought not to have been passed. It may be that in some cases it would be better to defer for decision at the trial

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the question whether leave should be revoked and the plaint taken off the file—see *The Secretary of State for India in Council v. Golabrai Paliram* (1). But, while that may be the proper course to adopt in some cases, it may not be the proper course to adopt in others, and I consider that in this case the question should be dealt with now.

The plaintiff's case does not rest entirely on the plea of limitation. It is argued on his behalf that the plaint clearly discloses that part of the cause of action arose within the jurisdiction of the Court. The suit, as I have already indicated, has been filed to recover damages alleged to have been suffered as the result of the malicious filing of a petition in insolvency. Before the plaintiff can recover damages in a suit of this nature it must be shown that the petition was in fact dismissed. It is urged that the dismissal of the petition by this Court constitutes part of the cause of action, and that this part arose in Rangoon. It is also urged that inasmuch as the plaintiff is a banker and money-lender carrying on business in Rangoon damage to his reputation and to his business was caused in Rangoon. In fact, it is said that Rangoon is the plaintiff's principal place of business. The plaintiff, therefore, contends that there are two grounds on which the order granting leave can be supported :

- (1) The dismissal of the petition constitutes part of the cause of action and the dismissal took place in Rangoon.
- (2) Damage was suffered in Rangoon.

If part of the cause of action arises here, the Court has full jurisdiction to try the suit. In *Cooke v. Gill* (2) Lord Esher (then Brett J.) observed :

(1) (1931) I.L.R. 59 Cal. 150.

(2) 8 C.P. 107.

“ ‘Cause of action’ has been held from the earliest time to mean every fact which is material to be proved to entitle the plaintiff to succeed,—every fact which the defendant would have a right to traverse.”

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The question of what constitutes a cause of action was considered in *Read v. Brown* (1) by Lord Esher (then the Master of the Rolls), Fry L.J. and Lopes L.J. and the definition given in *Cooke v. Gill* (2) was accepted as being correct. It is certainly necessary for the plaintiff in a suit of this nature to prove the dismissal of the petition. The dismissal of the petition is, therefore, a part of the cause of action. The petition was dismissed by this Court, and I think that it is rightly said that therefore part of the cause of action arose here.

Moreover, I am of opinion that the plea that the plaintiff suffered damage in Rangoon is sufficient to justify the order of the Deputy Registrar granting leave. Mr. Cowasjee contends that inasmuch as the plaintiff does not expressly plead that the damage in Rangoon constitutes part of the cause of action the Court is not entitled to take this argument into consideration. I do not agree. The plaint clearly sets out that the plaintiff is a banker and money-lender carrying on business in Rangoon, and it is pleaded that he has suffered injury in his credit and reputation here as a result of what has occurred. I am of opinion that the plaint does disclose that part of the cause of action arose in Rangoon and, therefore, the order of the Deputy Registrar in granting leave was an order properly passed. The applications for the revocation of this order must, therefore, be dismissed.

The plaintiff is entitled to costs, which I fix at three gold mohurs.

(1) 22 Q.B.D. 128.

(2) 8 C.P. 107.