ORIGINAL CIVIL.

Before Mr. Justice Braund.

1938

Jan. 25.

E. I. SEEDAT AND OTHERS

v.

MARIAM BI BI AND OTHERS.*

Practice—Plaintiffs more than one—Cannot appear separately—Costs—One set of costs for all the plaintiffs.

It is not possible, in a case where there is more than one plaintiff, for them to appear separately. If any of them is not disposed to act with, and to appear by the same advocate as, the others then the proper course is to apply to strike him out as a plaintiff and to add him as a defendant. Plaintiffs are entitled to one set of costs only between them and one plaintiff cannot ask for his costs separately from the others or other.

Re Kent Coal Concessions, 1923 W.N. 328 ; *In re Mathews*, (1905) 2 Ch. 400, referred to.

Paul for the 2nd plaintiff.

4th plaintiff in person.

Dadachanji for the 5th, 6th, and 8th defendants.

P. B. Sen for the 10th defendant.

This was a suit by four persons who claimed to be interested in the Moolla Ebrahim Wakf for an account from certain trustees of the wakf, for resettlement of the scheme for its management and for the appointment of new trustees. A preliminary decree for accounts was made and the case went before the Official Referee. His report with certain modifications was confirmed, and various orders were passed by the Judge on the Original Side and by the appellate Court. The case then came before the Original Side for a final decree, dealing, *inter alia*, with costs. The learned Judge's order deals *inter alia* with the costs of the suit and the costs of the reference and their apportionment. For the purposes of this report only the first six paragraphs and paragraph 15 of the order are published.

* Civil Regular Suit No. 480 of 1931.

1938

SEEDAT v. MARIAM BI BI.

BRAUND, J.—This is a suit which is drawing to a close and it is possible now to make a final order which, it is to be hoped, will dispose of the matter finally.

I do not wish, at this stage, to repeat unnecessarily the whole history of the matter. It has been fully dealt with on more than one occasion by the several learned Judges through whose hands it has passed in the course of its career. But it will be necessary for me to refer to some of the orders which have already been made, in order to explain the reasons for the final decree which I now propose to pass.

The suit began by a Plaint dated the 14th October 1931. The Plaintiffs were four persons who claimed to be interested in the Moolla Ebrahim Wakf. One of the original Plaintiffs is dead and is now represented on the record by his legal representative. Inasmuch as the difficulties involved in making the final decree relate principally to the proper order for costs, it will be convenient to deal with the position of the parties as we go.

The Plaintiffs carried on the suit alone until the 4th September 1934, when the tenth Defendant applied to be added as a Defendant. The reason of this is quite plain. It is, I think, quite clear that the original Plaintiffs at that point made an attempt to put an end to the suit by agreement with the Defendants, or, at least with some of them. It is equally obvious that, in a matter involving a public charity, it would have been a most improper procedure to have allowed a collusive compromise of this kind in a case involving allegations of very serious breaches of trust by the Trustees. It was not, I think, a manœuvre to which the Plaintiffs should have lent themselves. I cannot forbear to say that the history of far too many administration suits in this Court involving both public charities and private trusts—is a history of collusive compromise sanctioned by the Court itself. It is very gratifying to find that,

1938

SEEDAT v. MARIAM BI BI.

BRAUND, J.

in this case at any rate, it was stopped and that the Advocate General was brought onto the record to represent the public interest. It would be better still if the Advocate General was brought onto the record in all cases involving the execution of trusts relating to public charities and took a sufficiently active part in them to protect the interests of the public. It is, I venture, to think as much one of his duties to do so, as it is the duty of the Attorney-General in England to represent the public interest in cases of charities.

I think that, in strictness, the proper course would have been for the tenth Defendant to have applied to be substituted as Plaintiff instead of the original Plaintiffs and to have had them added as Defendants. That would have been the proper practice. However, that may be, the tenth Defendant was added as a Defendant and from that point onwards assumed the conduct of the suit.

The other matter, as regards the Plaintiffs that I must point out is a very serious one. There were four Plaintiffs. From the beginning two of them took no interest in the suit, one of them appeared separately by Mr. Paul, an advocate, and the fourth appeared in person and took an active part. I have said many times that it has yet to be learnt in this Court, that it is not, in any circumstances, possible, in a case where there is more than one Plaintiff, for such Plaintiffs to appear and act separately. It is an impossibility. If any of them is not disposed to act with, and to appear by the same advocate as, the others then the only proper course open is to apply to strike him out as a Plaintiff and to add him as a Defendant. That is elementary. [See *In re Mathews* (1) and *Re Kent Coal Concessions* (2).] It is no more possible for Plaintiffs to act and appear separately than it is for them to deliver separate plaints.

(1) (1 905) 2 Ch. 400. (2) (1923) W.N. 328.

Yet in this case, the position has been accepted throughout of the Plaintiffs not acting together. The whole vice of the matter is well illustrated when it comes, as it has come here, to dealing with the costs of the suit. The absurdity of one plaintiff asking for his costs to the exclusion of the others or other—as is being done here—is immediately apparent. * * *

Quite clearly, the Plaintiffs are entitled to one set of costs only between them. I have been addressed separately by Mr. Paul on behalf of Mr. Paul's plaintiff client and by the fourth plaintiff in person, each claiming the " lion's share " of the costs upon the ground of his individual activities in the suit. As I have already pointed out, no such question can ever arise in a properly constituted suit, inasmuch as Plaintiffs must act together. But in this suit the present position has been allowed to exist and I cannot alter it at this stage. All I can do is to allow on taxation one set of costs to the Plaintiffs. For the benefit of the Taxing Master, who will have to deal with the taxation, I point out that, in matters of taxation which are not specifically provided for by our own taxation rules, he has to follow the taxation practice of the Supreme Court in England. He will find the proper method of taxing a number of persons costs as " one set of costs " in the notes to the Rules of the Supreme Court O. 65, Rule 27 (8) at pages 1461 and 1462 of the 1934 White Book. " One set " means the amount of the costs which would have been incurred if the parties separately represented had appeared by the same solicitor. Each individual brings in his own separate bill and the Taxing Master has then (*a*) to tax off all improper items and (*b*) to apportion between them all proper duplicated items, allowing of course only one such duplicated item between them all.