1907.

DAMODAR v. SATYABHAMA BAI.

is marked out, and if that liability fails, there is no other liability for which the appellants can be held responsible. We do not agree with the District Judge when he says that in the plaint all that the plaintiff asks is a declaration that the respondent has a right to receive Rs. 52 from the appellants. The words "out of the cash allowance" mean a charge, nothing less or more, and the construction which the learned Judge has placed upon the relief claimed in the plaint is, we think, wrong. Mr. Khare asks us to give him an opportunity of once more going before the Collector for a certificate under the Pensions Act but once an application was made to the Collector and he has refused to grant a certificate. We do not think we should give the respondent another opportunity.

We must therefore reverse the order of the Court below and restore that of the Subordinate Judge. The costs of this appeal and of the appeal to the District Court to be on the respondents.

Decree reversed.

R. R.

ORIGINAL CIVIL.

Before Mr. Justice Davar.

1907.
March 21.

MOWJI MONJI (PLAINTIFF) *v.* KUVERJI NANAJI AND OTHERS (DEFENDANTS).*

Civil Procedure Code (Act XIV of 1882), *section* 28—*Misjoinder of parties and causes of action—"In respect of the same matter", Meaning of—Practice.*

The plaintiff sued two sets of defendants to recover from either the one or the other a sum of money for the rent of his godown. The plaintiff agreed to let a godown to defendants 1—6 from 1st May 1906. At the date of the agreement the godown was in the possession of Messrs. N. and Co. Defendants 1—6 alleged that they did not get possession of the premises in terms of this agreement; that only one compartment out of three was given to them on the 22nd May; that they did not get possession of the other two compartments and in consequence they had to hire other premises. Messrs. N. and Co. plead that there was an oral agreement with the plaintiff that they should occupy the godown till the end of May 1906; that they gave up possession of one compart-

* Original Suit No. 445-20047 of 1906.

ment of the godown before the 22nd May 1906 and on the 22nd May they gave up possession of the remaining portion to the plaintiff and the first set of defendants.

The defendants all pleaded that the suit as framed was bad by reason of misjoinder of parties and of causes of action.

Held, disallowing the objection, that the suit was properly constituted. The most convenient way to try all the questions arising between the plaintiff and the defendants and the two sets of defendants *inter se* would be by one suit where all the three parties are before the Court as parties.

The subject-matter in respect of which the plaintiff seeks relief is the rent of his godown. It is the same matter as regards both sets of defendants and both sets of defendants are interested in the adjudication of the questions involved in the suit.

The general principle governing the joinder of defendants would seem to be that there must be a cause of action in which all the defendants are more or less interested, although the relief against them may vary, but that separate causes of action against separate defendants quite unconnected are not involving any common question of law or fact cannot safely be joined in one action.

The object of section 28 seems to be to avoid multiplicity of suits if it could be done without embarrassment to any of the defendants.

Madan Mohun Lal v. *Holloway*[1] followed; *Sadler* v. *Great Western Railway Company*[2] distinguished.

THE plaintiff by an agreement dated Vaisakh Sud 7th 1962 (30th April 1906) agreed to let to the defendants 1—6 three *galas* or compartments of a godown for a fixed term at a rent of Rs. 425 per month commencing from the 1st May 1906 and to end on 17th May 1907.

On the 30th April 1906 the said premises were in the occupation of defendants 7—9 as the plaintiff's tenants.

The plaintiff alleged that on the 1st May 1906 the defendants 7—9 having failed to vacate the premises, the plaintiff gave to them on the same day a notice to quit and also gave them notice of his agreement with defendants 1—6.

He further alleged that on the 22nd May 1906 the defendants 7—9 gave delivery of one of the said three *galas* to defendants 1—6, that the remaining two *galas* were vacant about the end of May 1906 which fact was brought to the notice of defendants 1—6 but the said defendants refused to take possession

(1) (1886) 12 Cal. 555. (2) [1896 A. C. 450.

1907.

MOWJI MONJI v. KUVERJI NANAJI.

of the said two *galas* and at first alleged that they would hold over possession of two compartments in the same house in the occupation of one Chelaram Jasraj as the plaintiff's tenant and then alleged that they rented on 27th May 1906 another godown in the place of the said two *galas* on Rs. 465 a month for 6 months.

The plaintiff submitted that under the abovementioned circumstances either the defendants 1—6 were liable to him for the rent due from 1962 Vaisakh Sud 8th to Jeth Sud 7th (1st May to 30th May 1906) at Rs. 425 a month these defendants having their remedy over if any against the defendants 7—9, or that in the alternative the defendants 7—9 were liable to the plaintiff for compensation for use and occupation for the said period or for such portion thereof as they might be found to have been in possession before they delivered the same to the defendants 1—6, the defendants 1—6 being liable for the remaining portion.

The plaintiff further submitted that either the defendants 1—6 were liable to him in Rs. 1,275 being three months' rent from Jeth Sud 8th to Bhaderva Sud 7th 1962 (31st May to 26th August 1906) or that in the alternative the defendants 7—9 were liable to him in damages caused by their wrongful holding over the said premises assessed on the basis of rent at Rs. 465 per month as claimed by defendants 1—6.

He prayed accordingly.

All the defendants contended that the suit could not be maintained by reason of misjoinder of parties and causes of action.

The defendants 7—9 further contended that there was an oral agreement made between them and the plaintiff; that the defendants 7—9 should occupy the premises till the end of May 1906.

By consent of all parties the issue "whether the suit is maintainable as framed" was tried as a preliminary issue.

Jardine (with him *Lowndes*) for the plaintiff contended that the suit was maintainable. They relied on *Madan Mohun Lal* v. *Holloway*[1].

(1) (1886) 12 Cal. 555.

Inverarity for defendants 1—6:—The suit is not maintainable. Defendants 7—8 kept the godown till 31st May 1907. They have set up two inconsistent cases (1) on an oral agreement, (2) that possession was given up on 22nd May to some one.

Whatever cause of action against defendants 1—6 there is, is under the agreement of 30th April 1906.

The defence of defendants 1 to 6 is that plaintiff could not perform the agreement. The claim against defendants 7—9 is in tort, that defendants 7—9 held over against the landlords, see Annual Practice 1907, Order 16, Rule 4, and see also *Sadler* v. *Great Western Railway Company*[1].

Padsha for defendants 7—9:—Defendants 1—6 knew of the arrangement between plaintiff and defendants 7—9.

Jardine in reply.

DAVAR, J.:—The plaintiff who is the owner of a godown consisting of three compartments situated in Kalyan street on one of the Port Trust estates sues two sets of defendants to recover from either the one or the other set a sum of money for rent of his godown. The first six defendants are members of a firm of merchants and muccadams who carry on business as Messrs. Khimji Vishram. Defendants 7 and 8 are members of the firm of Nensy Khairaj and Company who are also merchants who carry on business in Bombay.

The plaintiff's godown was agreed to be let to Messrs. Khimji Vishram from the 1st of May 1906 for a fixed term of twelve months. At the date of the agreement the godown was in the occupation of Messrs. Nensy Khairaj and Company. It is alleged by Messrs. Khimji Vishram that they did not get possession of the premises in terms of this agreement; that only one compartment out of three was given possession of to them on the 22nd of May 1906; that they did not get possession of the two other compartments and consequently they hired other premises and they make certain counter-claims in respect of enhanced rent which they say they had to pay in consequence of their not having been put in possession of the whole godown in terms of their agreement.

(1) [1896] A. C. 450.

1907.

MOWJI MONJI v. KUVERJI NANAJI.

The second set of defendants plead that there was an oral agreement with the plaintiff that they should occupy the godown till the end of May 1906; that they gave up possession of a portion of the godown before the 22nd of May 1906 and on the 22nd of May they gave up possession of the remaining portion to the plaintiff and the first set of defendants Messrs. Khimji Vishram.

The defendants plead that the suit as framed is bad by reason of misjoinder of parties and of causes of action and the first issue in the case is "whether the suit as framed is maintainable." All parties agreed that this issue should be tried first as a preliminary issue.

Mr. Jardine contended that the suit was properly constituted and that the provisions of section 28 of the Civil Procedure Code enabled his client to maintain his suit as it was constituted. He relied on the case of *Madan Mohun Lal* v. *Holloway*[1].

Counsel for the defendants contended that the plaintiff had different causes of action against the two sets of defendants; that his claim against Messrs. Khimji Vishram was based on a contract and his claim against Messrs. Nensy Khairaj was in respect of an alleged tort in that they wrongfully refused to give up possession at the expiration of their period of tenancy. Mr. Inverarity pointed out that in Order 16, rule 4, the words "in respect of the same matter" which appeared in section 28 of the Civil Procedure Code did not exist and consequently the scope of that rule was much wider and yet under that rule a suit like the present one would have been bad. He placed reliance on the case of *Sadler* v. *Great Western Railway Company*[2]. Mr. Inverarity's contention was that the plaintiff ought to be put to his election as to which of the two sets of defendants he will proceed against in this suit. I heard counsel's arguments on the first issue and the suit then stood adjourned for me to consider my judgment.

The facts of the case of *Sadler* v. *Great Western Railway Company*[2] are very dissimilar to the facts in this case and I think that case is distinguishable from this in many ways. In that case the

(1) (1886) 12 Cal. 555. (2) [1896 A. C. 450

plaintiff claimed damages against two Railway Companies for two distinct causes of action and the only attempt made to justify the action as it was constituted was made in paragraph 5 of the plaintiff's statement of claim where it was alleged that it was "by their respective combined acts" the defendants prevented all access to the plaintiff's premises. One set of defendants owned premises to the south, the other to the north of the plaintiff's premises and each of the defendant companies were alleged to have caused obstruction to the plaintiff's premises on distinct sides of the same. Clearly therefore the plaintiff had a distinct and separate cause of action against each of the defendant companies in that case. Much of the argument also turned on the way the plaintiff's statement of claim was drawn. In that case the liability of the first defendant did not depend on any act of the second defendant. The relief claimed was not either joint or in the alternative and Lord Shand in the course of his judgment observed that the grounds of action were not only separable but were separate.

The facts of the case in *Madan Mohun Lal* v. *Holloway*[1] relied on by Mr. Jardine are very similar to the facts in this case. In that case the plaintiff sued to recover rent from the first defendant and in the alternative if it was proved that the first defendant had paid rent to the second defendant who was the plaintiff's vendor then to recover the same from him as money had and received on plaintiff's account and wrongfully retained by him. The Calcutta High Court reversing the decrees of two lower Courts held that the suit was properly constituted.

The judgment of the Calcutta Courts in two other cases, one of *Janokinath Mookerjee* v. *Ramruniun Chuckerbutty*[2] and the other *Bungsee Singh* v. *Soodist Lall*[3], are valuable guides on this question although the facts of those cases are not very similar to those in this case It seems to me that the safest thing is to be guided by the words of section 28 of the Code and the facts of this case, keeping in view the following general principle deduced from the result of the various cases on this point as summed up at page 146 of the Annual Practice 1907, where it is said "The

(1) (1886) 12 Cal. 555. (2) (1879) 4 Cal. 940.

(3) (1881) 7 Cal. 739.

1907.

MOWJI MONJI v. KUVERJI NANAJI.

general principle governing the joinder of defendants would seem to be that there must be a cause of action in which all the defendants are *more* or *less* interested, although the relief asked against them may vary, but that separate causes of action against separate defendants quite unconnected and not involving any common question of law or fact cannot safely be joined in one action." Remembering this and the words of section 28 "in respect of the same matter," let us consider how the facts of this case stand. What is the matter involved in the present suit? The plaintiff claims to recover rent of his property. For the month of May which is portion of the period for which rent is claimed, the first set of defendants were admittedly in possession of one *gala* or compartment from the 22nd of May and therefore *prima facie* they would be liable to pay some rent. The second set of defendants were in possession admittedly of the whole godown for some time in May and of two compartments till at least the 22nd of May so that *prima facie* they are liable to pay some rent to the plaintiff for that month. The second defendants unreservedly admit their liability to pay rent for the month of May Rs. 285 and they say they have always been ready and willing to pay that. The first defendants admit their liability to pay for one compartment for the whole period of their occupation subject to their counter-claim for damages for the enhanced rent they had to pay by reason of the plaintiff's failure to put them in possession of the godown in terms of his agreement. The subject-matter in respect of which the plaintiff seeks relief against both sets of defendants is the rent of his godown. It is the same matter as regards both sets of defendants and both sets of defendants are interested in the adjudication of the questions involved in the suit and there are many questions of fact which are common to the case of both sets of defendants. The object of section 28 seems to be to avoid multiplicity of suits if it could be done without embarrassment to any of the defendants. I have taken into consideration the various possible results of the suit and the questions involved in the suit and I have come to the conclusion that the most convenient way to try all the questions arising between the plaintiff and the defendants and the two sets of defendants *inter se* would

1907.

MOWJI MONJI v. KUVERJI NANAJI.

best be tried in one suit where all the three parties are before the Court as *parties*. The absence of one of the two sets of defendants would be both inconvenient and embarrassing in trying the questions between the plaintiff and one set of defendants whereas the presence of both sets of defendants would lead to a complete and effectual adjudication of all questions involved in the suit.

I hold for the reasons I have given above that the suit is properly constitued, that there is no misjoinder either of parties or of causes of action and I record a finding on the first issue in the affirmative.

The costs occasioned by the argument and trial of the first issue reserved to be dealt with when the question of costs of the suit is considered.

Attorneys for plaintiff: *Messrs. Mulla and Mulla.*

Attorneys for defendants: *Messrs. Bhaishanker, Kanga and Girdharlal*: and *Messrs. Matubhai, Jamietram and Madan.*

E. N. L.

CRIMINAL REVISION.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

EMPEROR *v.* PASCAL SHIMAU.*

1907.
April 10.

Cantonments Act (*XIII of* 1889), *sec.* 13†—*Supply—Intoxicating drug—Supply of liquor to a European soldier—Servant of a soldier buying liquor with soldier's money for soldier's use.*

The accused, a servant of a soldier, bought with his master's money liquor from a shop in obedience to his master's directions and gave it to him. On

* Criminal Application for Revision, No. 72 of 1907.

† The Cantonments Act (XIII of 1889), section 13, runs as follows:—

If within a cantonment, or within such limits around a cantonment as the Local Government may, by notification in the Official Gazette, prescribe in this behalf, any person not subject to military law or any person subject to military law otherwise than as an officer or soldier knowingly barters, sells or supplies, or offers or attempts to barter sell or supply, any spirituous liquor or intoxicating drug to or for the use of any European soldier, or to or for the use of any European or Eurasian being a follower or a soldier's wife, without the written permission of the Commanding Officer of the Cantonment or of some person authorised by the Commanding Officer to grant such permission, he shall be punished with a fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both.