

ORIGINAL CIVIL.

Before Mr. Justice Russell.

Haji Bibi, Plaintiff, v. H. H. Sir Sultan Mahomed Khan
and others, Defendants.*

1908.

February 24.

Practice—Plaintiff, meaning of—Judicature Acts 36 and 37 Vict., Ch. 66, section 100—Civil Procedure Code (Act XIV of 1882), sections 26, 179, 180—Right to begin—Some of defendants supporting plaintiff's case—Order in which to address the Court.

The word "plaintiff" means "every person asking relief against another person."

The plaintiff and such of the defendants as support the plaintiff's case, wholly or in part, must address the Court and call their evidence in the first place, and then following the words of section 180 of the Civil Procedure Code the other party, namely the persons opposed to the plaintiff's case and that of the other defendants supporting the plaintiff, must address the Court and call their evidence.

In this case the defendants 2 and 9 to 14 who supported the plaintiff's case claimed the right to call their evidence after that of the defendants 1 and 3 to 8 who were opposed to the plaintiff had called theirs.

Bahadurji (with *Setalvad*) for plaintiff.

Inverarity (with him *Raikes* and *Lowndes*) for defendant No. 1.

Bahadurji and *Desai*, for defendant 2.

Jardine and *Robertson*, for defendant 3.

Branson and *Vicaji*, for defendants 4 and 6.

Scott, Advocate General and *Strangman*, for defendant 5.

Padsha and *Lalkaka*, for defendants 7 and 8.

Desai with *Setalvad* and *Davar* for defendants 9 to 14.

RUSSELL, J.—Since this point was raised by the Advocate General, and considering as I do that it is one of very great importance to the parties and is also one with regard to which I have been unable to find any direct authority either in India or under the English practice (and I have searched all the authorities

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I could think of), I carefully considered it. In the first place it appears to me that it must be a question for the discretion of this Court to decide. I am seized of this case and it is my duty to see that the case is tried in a fair and proper manner without prejudice or injury to either side as against the other.

Now, I have been unable to find any definition of the word "plaintiff" under the Indian Procedure; but I find in the Judicature Act in England a section, *viz.* section 100, which says that the word "plaintiff" "shall include every person asking any relief (otherwise than by way of counter claim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise."

Therefore, I think, common sense tells us that "plaintiff" ought to mean, "every person asking relief against another person."

I have read the plaint and all the written statements since this case was last on, and the conclusion I have come to is that without doubt the plaintiff and the second defendant and defendants 9 to 14 must be considered as—to use a colloquial expression—being in the same boat, although no doubt defendants 9 to 14 are not seeking any relief possibly beyond that of the plaintiff and the second defendant; and, therefore, you have these two forces arrayed against each other—the plaintiff and the second defendant and defendants 9 to 14 against the other defendants in the suit.

Now I must come to the Code of Civil Procedure. Section 26 of the Code says:—"All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally or in the alternative, in respect of the same cause of action."

It appears to me that there was originally nothing to prevent the second defendant from joining the plaintiff in the plaint, and probably there was nothing to prevent defendants 9 to 14 from joining the second defendant and the plaintiff.

Now, what do we find in Chapter XV of the Code? Section 179 says: "On the day fixed for the hearing of the suit or on any

other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove." The explanation to it is:—"The plaintiff has the right to begin, unless where the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant, the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin."

Then see what section 180 says; and that seems to me what ought to guide me in this matter. Section 180 does not say: "the defendant shall then state his case", but "the other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case;"—"the other party," that is to say, the other opposing force. It seems to me that if I were to accede to the arguments of Mr. Bahadurji, counsel for the plaintiff, and Mr. Setalvad, counsel for defendants 9 to 14, it would enable a plaintiff to make parties defendants instead of plaintiffs and thus enable them to meet the case of such defendants as was opposed to the plaintiffs during the course of the hearing as the case went on. Thus, in the present case the plaintiff would begin her case; then the first defendant, who is the other party, would state his case and call his evidence; then the second defendant, who supports the plaintiff's case would state her case and call her evidence; then possibly the third defendant, who is opposing the plaintiff would open her case and call her evidence; and so on, so that the record would be in a hopeless state of confusion. Further, such a procedure would enable such of the defendants as supported the plaintiff to adduce from time to time new and further evidence to meet the points suggested in the evidence of the defendants opposed to the plaintiff. I certainly thought after plaintiff's cross-examination was finished that the second defendant and the other defendants in the same interests as the plaintiff, were going to accede to this view. For when they were asked whether they intended to examine the plaintiff before her cross-examination began, they said they did not wish to examine her; and thereupon she was cross-examined by Mr. Inverarity, and then

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by the Advocate-General and Mr. Padshah, as representing the other defendants who are opposing her.

For these reasons, it seems to me that I must rule that in this case the plaintiff and such of the defendants as support the plaintiff's case wholly or in part, must address the Court and call their evidence in the first place, and then, following the words of section 180 of the Code, the other party, namely the persons opposed to the plaintiff's case and that of the other defendants supporting her, must address the Court and call their evidence; and so the case must be proceeded with in a proper, legal and consistent manner.

Attorneys for the plaintiff:—*Messrs. Edgelow, Gulabchand, Wadia and Co.*

Attorneys for the defendant:—*Messrs. Payne and Co. and Messrs. Mehta and Dadachanji and Messrs. Pestonji, Rustim S. Kolah and Messrs. Edgelow, Gulabchand, Wadia and Co.*

B. N. L.

ORIGINAL CIVIL.

*Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice,
and Mr. Justice Batchelor.*

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February 25.

SONABAI, WIDOW, PLAINTIFF, v. TRIBHOWANDAS NAROTAMDAS MALVI AND OTHERS, DEFENDANTS, AND SONABAI, WIDOW, APPELLANT AND PLAINTIFF, v. TRIBHOWANDAS NAROTAMDAS MALVI, RESPONDENT AND DEFENDANT.*

Civil Procedure Code (Act XIV of 1882), section 380—Appeal lies from order under section 380, directing a woman to deposit security for costs—Such order is judgment under Letters Patent, clause 15—"Suit for money", what is.

An appeal lies against an order passed by a Judge sitting on the original side of the High Court requiring security from a woman under section 380, Civil Procedure Code. Such an order is a judgment within the meaning of clause 15 of the Letters Patent.

Seshagiri Row v. Nawab Askur Jung Aftab Dowla(1) followed.

* Suits Nos. 449 and 450, Appeals Nos. 1517, 1518.

(1) (1902) 26 Mad. 502.