APPELLATE C VIL.

Before Sir Lallubhai Shah, Kt., Acting Chief Justice, and Mr. Justice Fawcett.

1924. *August* 1.

BHAGWANJI SANKLESHWAR (ORIGINAL PLAINTIFF), APPELLANT *v.* THE AHMEDABAD ELECTRICITY COMPANY, LLD. (ORIGINAL DEFENDANT), RESPONDENT*.

Indian Electricity Act (IX of 1910), section 22, Schedule, clause VI, paras. 4 and 5—Transfer of supply of electricity—Requisition in writing necessary.

When a transfer of supply of electricity from one house to another is claimed as of right, it is necessary to make a requisition in writing as required by clause VI, paragraphs 4 and 5 of the Schedule of Indian Electricity Act, IX of 1910.

SECOND appeal against the decision of F. X. DeSouza, District Judge of Ahmedabad, confirming the decree passed by B. N. Shah, Joint Subordinate Judge at Ahmedabad.

In 1915, the plaintiff hired a house in Dhinkwa Chowki, Ahmedabad, for the purposes of a flour mill. To run the grinding machine with electrical energy, the plaintiff applied, on May 24, 1915, for electric supply to the Ahmedabad Electricity Company, Ltd. His requisition was complied with and connection No. 206 was granted to him. In 1920, the plaintiff had to remove his flour mill to another house in Shankdi Sheri, Ahmedabad. He, therefore, applied to the manager of the Company to transfer the connection No. 206 to the new premises. The manager replied that to transfer the connection was within the discretion of the Company and the Company was not inclined to do so.

An action was, therefore, instituted by the plaintiff to compel the defendant Company to transfer the connection from the house in Dhinkwa Chowki to the

* Second Appeal No. 240 of 1923.

house in Shankdi Sheri, Ahmedabad City, and to recover Rs. 650 damages. He relied on the practice of the Company to transfer the connections whenever applied for.

The defendant Company contended *inter alia* that there was no provision in the Indian Electricity Act, 1910, for transfer of connection or any statutory liability on the Company to transfer such connections without written requisition being made as required by clause VI, paragraphs 4 and 5 of the Schedule to the Act; that no such requisition was made by the plaintiff.

The Subordinate Judge held that a written requisition in proper form as required by the Schedule to the Act was a condition precedent before the plaintiff could claim the transfer of the connection as of right; that the plaintiff could not take advantage of the indulgence extended to other customers by the Company. He, therefore, dismissed the suit.

On appeal, the District Judge, confirmed the decree.

H. C. Coyajee, with *Ratanlal Ranchoddas*, for the appellant.

O'Gorman, with Messrs. *Little & Co.*, for the respondent.

SHAH, AG. C. J.:—This appeal arises out of a suit filed by the plaintiff against the Ahmedabad Electricity Company, Ltd., for the supply of electricity to premises situated in another street in substitution of the supply which the plaintiff used to have in respect of premises situated near Dhinkwa Chowki. So far as the supply of electricity to the premises near Dhinkwa Chowki was concerned, it was properly obtained by the plaintiff on a requisition contemplated by the Indian Electricity Act, IX of 1910. It appears, however, that the plaintiff in accordance with the somewhat loose practice, which

1924.

BHAGWANJI v. THE AHMEDABAD ELECTRICITY CO., LTD.

used to prevail before the year 1920, asked for the supply of electricity for the new premises without making a requisition in writing as required by clause VI, paragraphs 4 and 5 of the Schedule to the Act. There was some correspondence after he asked for this supply. The Company apparently did not insist upon any requisition as required by the Act, and for some other reason put off supplying electricity to the plaintiff. As a result on the August 27, 1920, the plaintiff filed the present suit, in which he prayed for an order directing the defendant Company to transfer the connection No. 206 from one house to another house mentioned in the plaint.

The Company pleaded in defence that the suit was not maintainable, among other things, on the ground that no requisition as required by the Act was made. Soon after this plea was taken, it appears that the plaintiff submitted a requisition as required by clause VI of the Schedule. But the contentions of the parties with reference to this requisition were not made the subject matter of any issues in the trial Court at the hearing. The suit proceeded on the original cause of action, and the first question that the trial Court applied its mind to was whether the requisition in writing was necessary before the plaintiff could have a new connection in lieu of the old one. The trial Court decided that point against the plaintiff, and dismissed the suit directing each party to bear his own costs.

The plaintiff appealed from that decree, and in appeal the same position which the plaintiff had taken up in the trial Court was sought to be justified. But the appellate Court was not satisfied as to the correctness of the plaintiff's position, and accordingly dismissed the appeal.

The plaintiff has now appealed to this Court, and the only question that arises on this appeal is whether the requisition in writing as required by clause VI was necessary in order to enable the plaintiff to claim the supply which he wanted in respect of the new premises.

There is no point in the memorandum of appeal, and really no point has been raised before us as to the right which the plaintiff may have on his requisition which he made in October 1920. The question whether the Company were justified in not complying with that requisition as the present suit was pending, has not been investigated in this suit, and, it is contended by the defendant, that it is outside the scope of this suit. Whatever the respective rights of the parties may be with reference to that requisition, they must be left to be determined, if they are not adjusted otherwise, in a separate suit.

In this appeal we are concerned with the only question which arises, whether the requisition as required by clause VI was essential before the plaintiff could claim a supply of electricity as of right. On that point reference is made on behalf of the appellant to section 22 of the Act, and it has been argued that though a requisition may be necessary where a party asks for supply in the first instance, it is not an essential condition for his claiming the supply as a substitute for the existing supply that he should make such a written requisition.

It is common ground that there is no provision expressly for such transfer of supply of electricity from one house to another, and, whenever a requisition is made under the Act, it is for particular premises. There is no express provision for the transfer of supply from one place to another. The provisions of the Act,

1924.

BHAGWANJI v. THE AHMEDABAD ELECTRICITY CO., LTD.

indicate that when the plaintiff wanted the supply of electricity for his new premises, he had to make a requisition for that purpose under the Act. That requisition he admittedly did not make before the suit.

It is urged, though I do not see how it can afford any answer to the legal defence raised by the defendant, that the practice of the Company was not to insist upon such requisitions when the person concerned wanted the transfer of such supply of electricity from one house to another. It is true that the practice of the Company was as stated by the plaintiff. It appears from the purshis put in on behalf of the defendant, that the Company had adopted that practice. But the practice cannot alter the provisions of law, and the Company was entitled, it seems to me, in this suit to insist upon the defence open to them, that the requisition as required by paragraphs 4 and 5 of clause VI of the Schedule to the Act was necessary. It may be rather misleading and even unfair to an individual that the Company should adopt such loose practice, and then insist upon a written requisition as required by the Act, when in fact about that time they supplied electricity to some persons without such requisitions. The propriety of such conduct is not a matter in issue in this suit, and it is not necessary for me to say anything more on that point. It is rather hard upon a person to be told in effect that the Company would not insist on a written requisition and when he insists upon his rights to be told that the absence of such requisition creates a difficulty in his way. It may be that by adopting that line of conduct in some cases, there may be an estoppel against the Company. But in the present case there is no plea of estoppel put forward, and the point of estoppel which was urged for the first time in the District Court was disallowed. In the present case there is no basis for the plea of estoppel and there was

no issue on that point in the trial Court. The inconvenience to a party resulting from such practice is not an answer to the plea that a written requisition is necessary. As I have said we are not concerned in this case with the rights of the parties on the requisition put in after the suit was filed.

I would confirm the decree of the lower appellate Court and dismiss the appeal with costs.

FAWCETT, J.:—I concur. There are no doubt some equities in favour of the plaintiff, arising out of the correspondence between the parties prior to the suit, and the practice of the Company in not insisting on written requisitions. But equities cannot prevail against the express terms of the Statute, and that seems to me to be a complete answer to the contention of the plaintiff in the plaint that he was entitled to a supply for the new premises without any written requisition of the kind in question. The two lower Courts have, in my opinion, rightly decided that question; and, as that is the main basis of the plaintiff's suit, I think we can only dismiss his appeal with costs.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

Before Sir Lallubhai Shah, Kt., Acting Chief Justice, and Mr. Justice Kincaid.

MANJAYA SANNAYA SHANBHAG AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS *v.* SHESHGIRI SHAMBHULING UPADHYA AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS*.

1924.

August 22.

Hindu Law—Widow's estate—Surrender—Surrender must be to the whole body of reversioners of the same degree.

* Second Appeal No. 372 of 1922.