

1900
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 CRIMINAL
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 28 C. 428.

an improper sentence. The accused is a young lad, for even in the descriptive roll sent up from the police, he is put down as 15 years of age. And this appears to be his first offence. We accordingly set aside the sentence of imprisonment for one month and in lieu thereof, considering the nature of the offence, direct that the petitioner do undergo a whipping of five stripes by way of school discipline and then be discharged from custody.

28 C. 424.

ORIGINAL CIVIL.

Before Mr. Justice Stanley.

GURMUK ROY AND OTHERS v. TULARAM.* [3rd June, 1901.]

Practice—Documents, inspection of—Civil Procedure Code (Act XIV of 1882). s. 180—Discovery.

Where inspection of documents is objected to on the ground of immateriality, the Court will, if necessary, order them to be produced for its own inspection, in order to judge of their materiality.

[425] THIS was a chamber application by the defendant for inspection of the plaintiff's books of account.

The plaintiffs were commission agents employed by the defendant and were bringing a suit to recover certain money alleged to have been expended on behalf of the defendant.

The plaintiff filed their affidavit of documents on the 20th of March and claimed the right of sealing up certain portions of their account, which they alleged did not relate to the matter in question and of which they refused to allow inspection to the defendant.

The defendant alleged in his W. S. that the plaintiffs had agreed to chagre the defendant with the actual prices of the goods supplied, but had in fact overcharged and wrongly charged him.

The defendant now made this application for discovery of those portions of the plaintiff's books of account, which he alleged the plaintiff had wrongfully sealed up, and which he further alleged, would show the actual prices paid for the goods supplied and the persons from whom they were purchased.

Mr. Jackson (in support of the application):—They refuse us inspection of that portion of their accounts which sets out the amounts they themselves actually paid for the goods bought for us. The amounts put down in their account to us are overcharges. Under Order XXXI, Rule 1 of the Annual Practice it is stated there are only four grounds on which discovery can be resisted, and not one of those applies here.

Mr. Garth (contra).—The Court cannot make the order asked for. The matters sought to be inspected are not the subject of the suit.

Nittomoye Dasse v. Soobul Chunder Law (1); *Dhoroney Dhur Ghose v. Radha Gobind Kur* (2).

Here the defendant says there are entries in our books, which would show so and so. We say there are not. How can he get discovery? We have put in our affidavit every entry which has [426] anything to do with the account, and the defendant is not entitled to roam over the whole of our books.

* Suit No. 864 of 1900.

(1) (1895) I. L. R. 23 Cal. 117, 127.

(2) (1896) I. L. R. 24 Cal. 117.

Mr. Jackson in reply.—We say they have overcharged us. That is relevant enough to the suit, and we want to know the actual prices they paid for the goods. We know what we paid them.

In *Heeralall Rukhit v. Ram Surun Loll* (1) a similar case Pontifex, J., directed a reference to an officer of the Court to report on the relevancy of the documents, of which inspection was sought.

This was followed by Sale, J., in an unreported case, *Mughu Bibee v. Heeralall* appearing in the records of 2nd May 1894.

A man can always, alleging a person to be his agent, claim an account.—*Makepeace v. Rogers* (2).

Under Order XXXI, Rule 1, documents of which inspection can be obtained are not confined to those that would be admissible in evidence. In the case cited by my friend the learned Judge's remarks as to discovery are mere dicta and not necessary to the decision of the case. The judgment of Pontifex, J., followed by Sale, J., is in point. Here we allege overcharge and give instances. They haven't met our affidavit.

STANLEY, J.—Let the books be produced before me on Saturday next at 11 o'clock for the purposes of inspection under s. 130 of the Civil Procedure Code. I reserve costs and adjourn this application.

Attorneys for the Plaintiffs: Messrs. *Leslie & Hinds*.

Attorney for the Defendant: *Babu Kally Mohan Rukshit*.

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[427] APPELLATE CIVIL.

Before Sir Francis W. Maclean, K. C. I. E., Chief Justice, and Mr. Justice Banerjee.

JANAKDHARY SUKUL (*Plaintiff*) v. JANKI KOER AND OTHERS
(*Defendants.*)* [23rd August, 1900].

Civil Procedure Code (Act XIV of 1899), ss. 410, 419—Act VIII of 1859, ss. 808, 810—Suit by pauper—Application for permission to sue in forma pauperis—Limitation—Limitation Act (XV of 1877), s. 4.—Explanation—Date of institution of suit payment of Court fees.

An application for leave to sue as a pauper being made, the defendant put in a petition of objection opposing it, and thereupon the applicant put in the proper Court-fee and asked the Court to treat his application as a plaint.

Held, that the application should be deemed for the purpose of limitation to be a plaint presented on the date on which it was filed. *Skinner v. Orde* (3) followed; *Abbasi Begam v. Nanki Begam* (4) dissented from.

THE plaintiff sued to recover possession of certain properties on the allegation that he was dispossessed therefrom on the 24th March 1874. He alleged that he had been a minor at the time of the dispossession, and that he had attained his majority on the 21st December 1891. The plaintiff presented his application for leave to sue as a pauper on the 8th December 1894. The defendants opposed the application and it was

* Appeal under s. 15 of the Letters Patent, No. 48 of 1899, against the decree of the Hon'ble Mr. Justice Wilkins, one of the Judges of this Court, dated the 14th of June 1899, in Appeal from Appellate Decree No. 1585 of 1897, against the decree of Alfred F. Stienberg, Esq., Additional Judge of Sarun, dated the 16th of July 1897, affirming the decree of Babu Behari Lal Mullick, Subordinate Judge of that District, dated the 7th of May 1896.

(1) (1879) I. L. R. 4 Cal. 825.

I. A. 126.

(2) (1865) 34 L. J. Ch. 896, 898.

(4) (1896) I. L. R. 18 All. 206.

(3) (1879) I. L. R. 2 All. 241; L. R. 6

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