

1903
MAY 4.

30 C. 625.
[625] ORIGINAL CIVIL.

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SURAJ PROSAD v. STANDARD LIFE INSURANCE COMPANY.*
[4th May, 1903.]

30 C. 625. *Practice—Examination of Witness on Commission—Prolonged and unnecessary Cross-examination.*

Where the Court is satisfied that the cross-examination of any witness on commission is being unnecessarily prolonged, it will order such cross-examination to be concluded within a certain time.

THIS was an application by the defendant Company, on notice to the plaintiff, who did not appear, asking for an order that the cross-examination of a witness, Lala Gurnarain, called on behalf of the defendant Company and being examined on commission in Lucknow, be declared concluded.

It appeared that, in pursuance of an order of this Court dated the 24th day of February 1903, the District Judge of Lucknow had delegated Shama Churn Banerjee, an advocate, as Commissioner to take the evidence of certain witnesses in Lucknow on behalf of the defendant Company and amongst others of the said Lala Gurnarain.

The application was supported by affidavits, from which it appeared that the suit was instituted for the recovery of the sum of Rs. 50,000 alleged to be due to the plaintiff as the alleged assignee of a policy of insurance on the life of one Lala Khoonoolall, since deceased, and dated the 19th of March 1900; that the principal facts sought to be proved through the witnesses, on commission, were that Lala Khoonoolall had suffered from diseases which, as well as the names of the various doctors by whom he had been treated, had been fraudulently concealed from the defendant Company; and that the statements made by the assured with regard to his age were untrue both to his knowledge and to that of the plaintiff and the members of his firm.

[626] It was further stated in the said affidavits that Lala Gurnarain in his examination-in-chief deposed to the fact of the marriage of his sister with Khoonoolall and to the subsequent *gowna* ceremony following such marriage, and in support of this oral testimony produced two books of account of his father's banking firm of Dilsook Roy Jugger Nath; that the examination-in-chief of Lala Gurnarain by the defendant's counsel lasted 7½ hours; and that the cross-examination of the said witness by the plaintiff's pleader was then proceeded with.

It further appeared that, after such cross-examination had lasted 42 hours, the defendant's counsel gave notice to the plaintiff's pleader that unless the cross-examination were concluded in the course of that day, he would apply to this Court for relief against an abuse of cross-examination; that the said cross-examination had not concluded by the end of that day, and that accordingly the defendant's counsel had withdrawn the said witness, after a cross-examination extending to over 47 hours, until the directions of this Court should be obtained; that the questions put to the said witness were largely irrelevant and immaterial; and that the cross-examination was conducted generally with the object and in a manner calculated to delay the proceedings, and harass the witness.

It further appeared that the remaining witnesses to be called on behalf of the defendant Company had since been disposed of both in

* Application in Original Suit No. 503 of 1901.

examination-in-chief and cross-examination, and that the said witness, Lala Gurnarain, was then undergoing a continuation of his cross-examination.

Mr. Dunne (Mr. J. G. Woodroffe with him), in support of the application, referred to the case of *Nistarini Dassi v. Nundo Lall Bose* (1) in which a similar application (2) was granted by Stanley, J.

STEPHEN, J. In this case it is shown by affidavits that there has apparently been a prolonged and unnecessary cross-examination. Considering the application which was made on a previous occasion on behalf of the plaintiff for adjournment and the [627] non-appearance of the plaintiffs to-day, I think it is my duty to order that the cross-examination of Gurnarain do close on Tuesday. This order is not to affect the defendant's right to re-examine.

Costs reserved.

The Registrar to be at liberty to telegraph the effect of this order to the Commissioner.

Attorneys for the plaintiff: *Wilson & Co.*

Attorneys for the defendant: *Dignam & Co.*

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ORIGINAL CIVIL.

ISSUR SINGH v. G. BERGMANN.* [29th April, 1903.]

Practice—Stay of Proceedings in Small Cause Court—Transfer of suit on a Promissory note—Suit for an account in the High Court—Procedure—Matter of convenience rather than of right—Costs.

As a General rule, it would be no answer as regards a suit in the Small Cause Court upon a promissory note, for the defendant in that suit to say that the claim is a matter of account. But if subsequently a suit is instituted in the High Court by the defendant in the Small Cause Court suit, in which all transactions between the parties can be dealt with, and if he gives security for the total amount of his indebtedness, then it is desirable that there should not be a separate proceeding in respect of the promissory note though *prima facie* it does not constitute an item in a running account between the parties. The question of procedure becomes a matter of convenience rather than of right, and justice can be done between the parties by apportionment of costs after the account has been taken in the High Court suit.

[Fol. 9 I. C. 299; Ref 32 I. C. 582.]

ORIGINAL SUIT.

The plaintiff, Issur Singh and others, who carry on business as traders at No. 10, Municipal Market, Calcutta, in winter cloths and woollen goods, used to indent for goods from Europe through the defendant, who is a merchant carrying on business under the name and style of B. Regold and Bergmann at No. 142, Radha Bazar Street, Calcutta, and who acted as indent agents of the plaintiffs. In respect of these various indents, drafts were drawn against goods, and security was given from time to time by the plaintiffs for the amounts due on those drafts. The security [628] consisted of goods and also promissory notes executed in favour of the plaintiffs, which were endorsed over to the defendant. Payments were made by the plaintiffs from time to time in respect of their indebtedness to the defendant, and realizations were made by

Original Civil Suit No. 26 of 1903.

(1) (1869) I. L. R. 26 Cal. 591; 891. (2) Unreported.