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IN THE MATTER OF THE PETITIONS OF J. D. SUTHERLAND.

that conclusion. The facts were such as might fairly lead him to think that a breach of the peace was likely to ensue; and, being so satisfied, and having recorded the grounds thereof, he had jurisdiction to proceed in the matter. That objection to his proceedings therefore in my opinion fails. The grounds upon which it was sought to set aside this order, as regards the whole of it, fail; but for the reason that the Magistrate has taken upon himself erroneously to find that Crowdy was in possession, the order so far as it relates to the piece of land C, must be set aside.

As to costs we think that each party should pay his own.

Order modified.

[APPELLATE CIVIL.]

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July. 23.

Before Sir Richard Couch, Kt., Chief Justice and Mr. Justice Bayley.

IMRIT NATH JHA (PLAINTIFF) *v.* ROY DHUNPAT SING BAHADUR AND OTHERS (DEFENDANTS).*

Joinder of different Causes of action against different Parties—Multifariousness.

Under five different pattas, A granted to *B* patni leases of five different mehals. The rents of the mehals falling into arrears, the mehals were sold on two different dates. *A* purchased two of the mehals, *C* purchased two of the mehals, and *D* purchased one of the mehals.

In a suit brought by *B* against *A*, *C*, and *D*, to set aside the sales on the ground of irregularity.

Held, the suit was bad for multifariousness, and must be dismissed. (1)

This was a suit for confirmation of possession of five patni talooks, by setting aside a sale held under Regulation VIII of 1819, brought by Imrit Nath Jha against Roy Dhunpat Sing Bahadur, Braja Jha, Sheikh Inayet Ali, Sheikh Zaman Bax, and Rani Parbatti. The plaint stated that the plaintiff had obtained from the defendant Roy Dhunpat Sing the patni settlement of the five talooks under five patni pattas, dated the 7th May

*Regular Appeal, No. 277 of 1871, from the decree of the Subordinate Judge of Purneah, dated the 6th September 1871.

(1) See *Commissioners of Sewers of the City of London* v. *Glasse* L. R., 7 Ch., 456

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1868; that in Baisakh 1279 Mulki (April 1871), Roy Dhunpat Sing filed a petition in the Collectorate of Zilla Purneah for the sale of the said talook on account of arrears of the last half-year; that although the plaintiff was ready to pay the sum of Rs. 239, amount of arrears before the sale, yet the defendant Roy Dhunpat Sing fraudulently caused the property to be sold on the 15th and 16th of May 1871, without any notice in accordance with the provisions of cl. 2, s. 8, Regulation VIII of 1819; that at the sale the defendant Roy Dhunpat Sing purchased the talooks Nos. 1 and 3, the defendant Braja Jha purchased the talook No. 2, the defendants Sheikh Inayet Ali and Sheikh Zaman Bax purchased the talook No. 4, and Rani Parbatti purchased the talook No. 5.

The different defendants objected that the suit was multifarious, and ought to be dismissed.

The Subordinate Judge framed an issue as to multifariousness, and he also framed issues and took evidence on the merits.

He held that there was a misjoinder of claims, and dismissed the plaintiff's suit.

The plaintiff appealed to the High Court.

The *Advocate-General* (*offg.*) (Baboo *Taraknath Sen* with him) for the appellant.

Mr. *Allan*, Baboo *Srinath Das*, and Munshi *Mahomed Yousaff* for the respondents.

The *Advocate-General*, for the appellant, contended that the zemindar was a necessary party to the suit, Regulation VIII of 1819, s. 14; and so far as he was the purchaser of parcels Nos. 1 and 2, there was no multifariousness. It was too late to raise or try the question after evidence had been gone into. The meaning of the word "multifarious" is laid down in Mitford on Pleading, p. 218. Here the facts are so connected that they cannot constitute multifariousness. There were two material questions to be decided, *first*, as to the deposit of money; and, *second*, as to the sticking up of the notice. If the plaint was bad for multifariousness, it ought to have been returned. It

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was not necessary to go into evidence to try the question; and evidence having been gone into, the defect was cured. Though different interests had been carved out by the sale, still there was one cause of action.

Mr. *Allan*, for the respondents, contended that the pattas, though executed on the same date, were different. The patnis were different, the sums of money due for arrears were different, different notices were served in respect of the different mehals. If notice had not been properly served on one of the mehals, the sale of that mehal would be set aside, but the sale of the other mehals would stand good. The parties to the suit had not a common interest. The suit was therefore multifarious. He cited *Raja Ram Tewary* v. *Luchmun Pershad*. (1)

The *Advocate-General* did not reply.

COUCH, C. J.—The plaintiff in this case held five talooks under five patni pattas from the same zemindar, and it appears from the admission of the plaintiff's pleader, the correctness of which is not disputed, that these were separately sold for arrears of rent due separately upon each. The plaintiff now sues to set aside the sales, and to be restored to the possession of the property.

Now, as regards the zemindar defendant, there were five separate causes of action in respect of each talooka. Although one or more than one might have been properly sold, it by no means followed that all were. If it were not necessary to join other persons in the suit, it would be a case in which the Code of Civil Procedure would have allowed one suit to be brought because separate causes of action by and against the same parties may be joined in the same suit, subject to the entire claim being within the jurisdiction of the Court, but here it was necessary to join the other defendants who were purchasers of different talookas. With regard to them the causes of action, and the plaintiff's right to recover possession of the property,

(1) 8 W. R., 15.

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were separate. Here we have against the defendants the purchaser's separate suits upon separate causes of action put into one suit, and the decisions of this Court are clear that this is not proper. Sir Barnes Peacock, in the Full Bench case of *Raja Ram Tewary* v. *Luchmun Pershad* (1), gives reasons, in which I concur, why it should not be allowed; and he says that, when a plaint of this nature is presented, it ought to be rejected. Here the plaint was not rejected. The defendants were not present at that stage of the suit, and could not take the objection. The plaint having been received, all the defendants at the earliest possible time, including the zemindar, objected that they ought not to be joined in one suit. The objection being taken, the Judge properly framed an issue upon it. He not only framed that issue but other issues upon the questions of fact involved in the suit. I am not prepared to say that this was an erroneous course. The Judge might have felt doubtful whether his decision on the point of multifariousness if appealed against would stand, and if it did not, the case would be remanded to be tried on its merits. Probably he thought the better course was to take the evidence bearing upon the different issues, and then to give his judgment. Having done this, he decided, as he might have done in the first instance, that the suit ought to be dismissed upon the objection of misjoinder. It was contended by the learned Advocate-General that the Judge, having taken the evidence, ought not to have dismissed the suit upon that objection; that apparently no mischief had been done by joining the parties in one suit; and that the present respondent should not be allowed to retain the decision which has been given in his favor. I think this argument cannot have effect. The respondents had no power to compel the Judge to try singly the issue whether there was a misjoinder of claims. If he thought it proper to take evidence upon all the issues, the respondents could not prevent it. It is said that they could have come to this Court but this Court certainly would not, in the exercise of its supervising power, interfere in that stage of the proceedings. The defendants took the objection at the proper time, and the judg-

(1) 8 W. R., 15.

ment which the Judge gave, after hearing the evidence, must be considered as if it was given at the proper time, and as if he had rejected the plaint on its being first presented to him. When a plaint which ought to be rejected is received by the Court, and it is afterwards found that the plaint ought to have been rejected, the proper course is to dismiss the suit, as has been done here. Then, as regards any costs which the plaintiff may have been put to by the taking of the evidence, it seems that, after the objection of misjoinder had been taken by the defendants, and an issue raised upon it, the pleader for the plaintiff deliberately insisted on his right to proceed in this suit against all the separate purchasers.

We dismiss the appeal, and confirm the judgment of the lower Court with costs. Our judgment will not prejudice the right of the plaintiff to bring his suit in the proper form.

Appeal dismissed.

[ORIGINAL CIVIL.]

Before Sir Richard Couch, Kt., Chief Justice, and Mr. Justice Markby.

H. CLARTON *v.* D. N. SHAW AND ANOTHER.

1872 *August* 31.

Contract of Sale—Variance between bought and sold Notes—Admissibility of Parol Evidence.

The defendant, a Hindu, entered into a contract of sale with the plaintiff through the medium of a broker. The broker made no entry of the contract in his book, and there was a material variance in the bought and sold notes delivered by him. The notes were accepted and retained by the plaintiff and defendant respectively. In an action for non-delivery under the contract, *held* that the contract was made before the notes were written; the notes were sent by the broker to his principals merely by way of information; and the Statute of Frauds not applying, the plaintiff was at liberty to give parol evidence of the terms of the contract.

CASE stated by the first Judge of the Court of Small Causes, Calcutta, for the opinion of the High Court, under s. 7 of Act XXVI of 1864.

In this case the plaintiff sued the defendants for damages sustained through their breach of contract in failing to deliver