Before Mr. Justice Norman and Mr. Justice E. Jackson.

MUNSHI MANIRUDDIN AHMED (ONE OF THE DEFENDANTS) *v.* BABOO RAM CHAND AND OTHERS (PLAINTIFFS.)* 1869 *March* 23.

Multifariousness—Procedure.

A suit against five defendants, including claims of the most miscellaneous character against each defendant, was dismissed by the first Court, on the ground of multifariousness. The subordinate Judge, on appeal, held, that plaintiff was in any case entitled to a decision of one of his claims; and further held that the suit was not multifarious. *Held*, on special appeal, that the Court could not select one claim on which to proceed, when plaintiff insisted on pressing all.

Held, further, that the plaint was multifarious; and though it would not be permissible for defendant to take that objection for the first time after the case had been fully gone into on the merits, yet, as the objection had been taken originally, the suit was properly dismissed by the first Court.

Mr. *C. Gregory* for appellant.

Mr. *R. E. Twidale* for respondent.

NORMAN, J.—THIS is a suit against five different sets of defendants. It includes claims against the first defendant, Maniruddin, for three pieces of land in his possession, and to set aside a lease granted by one Puran to Mati Lal in 1256, Mulki, or in other words 1848; against the fourth defendant, Munshi Jowhar Ali, for one piece of land in his possession; the fifth defendant, Baboo Dhanpat Sing, for one bamboo clump in his possession; against the defendant No. 2, Kali Prasad, the son of Mati Lal Mahajan, for four kabuliats which Mati Lal is said to have received from Puran, the husband of the 3rd defendant, Chitan Dye. It includes claims of the most miscellaneous character against each single defendant, as for instance, to cancel a lease dated in 1862 from Mati Lal to the first defendant; to have the boundaries of the land claimed against the first defendant laid down; to re-open a passage which has been closed apparently by the first defendant.

*Special Appeal, No. 2161 of 1868, from a decree of the Subordinate Judge of Purneah, dated the 28th May 1868, reversing a decree of the Sudder Ameen of that district, dated the 8th November 1867.

1869

MUNSHI MANIRUDDIN AHMED v. BABOO RAM CHAND.

The plaint ends by stating that the cause of action arose in Bhadra 1871 (August 1865), and winds up with a claim for mesne profits from that date of all the properties, without distinguishing or attempting to distinguish the liability of the several defendants. The defendants put in their several answers. They objected that the suit was multifarious ; and the first Court dismissed the suit on that ground, saying that the plaintiff could not include in one suit distinct causes of action against different persons.

This decision was reversed by the Subordinate Judge, on appeal. He says that the proper stamp fee in the plaint having been paid, even if there was a misjoinder, the plaintiffs became entitled to the adjudication of at least one of their claims. He goes on to decide that the plaint is not multifarious. The Subordinate Judge's first observation would have had some force, if the plaintiff, on the objection being raised, had prayed for leave to withdraw his suit against all the defendants, except one, or one set of them. Had the plaintiffs done this, the first Court might, perhaps, have permitted the suit to proceed against such defendant or defendants alone, ordering the plaintiffs to pay the costs of the others. But the Court could not exercise that option for plaintiffs who insisted on their right to proceed against all the defendants.

It is clear that such a joinder of claims as exists in the present plaint is not permitted by section 8 of Act VIII. of 1859. In one case, like the present, *Cazi Muzhur Hossein v. Dinobundoo Sen* (1), Mr. Justice Phear said, " there are forty or fifty " different causes of action and it would be a perversion of all " principles of justice to allow them to be included in one suit." The objection is not on the ground that the stamp is insufficient. The Chief Justice in delivering the judgment of the Full Bench, *Raja Ram Tewari* v *Lachman Prasad* (2), a case very like the present, says :—" There is no clause which authorizes "different causes of action to be joined in one suit against several " parties, when each of those parties has a distinct and separate "interest. It would be just as reasonable to sue four defendants

(1) Bourke, 8. (2) Case No. 228 of 1865; 7th June 1867

1869

MUNSHI MANIRUDDIN AHMED v. BABOO RAM CHAND.

"on bonds given by each of them, or even to join with them a few other defendants for trespassing on the plaintiffs' lands, as it was to join all the defendants in the present suit. Such a joinder in one suit of distinct causes of action against different defendants, complicates the case before the Judge, and renders it exceedingly difficult for him, in dealing with the case of each defendant, to exclude from his consideration those portions of the evidence which may not be admissible, though admissible against one or more of the others. Moreover, it is vexatious and harassing to the different defendants. Such a procedure renders it almost compulsory on all the defendants to be present either in person or by their pleaders, whilst the case is going on against the others in respect of matters in which they are not interested; and, moreover, it is harassing and inconvenient as regards the attendance of witnesses of the several defendants, as it renders it necessary for the witnesses of each to be present and to be detained while the case of the others is being heard and determined." The Court, in that case, merely goes on to say, that Judges ought to reject plaints when brought against several defendants for causes of action which have accrued against them separately, and in respect of which they are not jointly concerned.

No doubt, it is too late for defendants to raise the objection with effect after the case has been fully tried and decided on the merits. But it seems to us clear that the objection is one which a defendant has a right to raise on the setttlement of issues, or on a motion to take the plaint off the file. He is not to be prejudiced, because a Judge has in his absence inadvertently admitted a plaint which is plainly multifarious. *Baboo Mati Lal* v. *Rani* (1).

We might have ordered that the plaint should be returned for the purpose of amendment, if we had seen any reason to think that the plaintiffs had a good cause of action, and have merely made a mistake in not bringing their suit in proper form. But we do not think that such is the case.

Here, if the cause of action had been stated to be to set aside the lease by Puran to Mati Lal in 1256, all three defendants who

(1) 8 W. R., 64.

1869

MUNSHI MANIRUDDIN AHMED v. BABOO RAM CHAND.

claim, or are supposed to claim under that lease, might have been joined as defendants, the suit would have been founded on one single cause of action, though the interests of the defendants, in separate parcels coveyed by that lease might have been different. But that is not what the plaintiffs want. They probably knew perfectly well that any such suit would be barred by limitation. The plaintiffs have apparently been out of possession at least since 1849.

Their plaint is involved and ambiguous, and it seems to us that this obscurity does not arise merely from ignorace or want of skill on the part of the person who drew it, but that its obscurity is not without a purpose. The plaint contains no clear statement as to the time at which the cause of action arose or at which the plaintiff was dispossessed. There is a vague and unintelligible statement as to some dedication of the property for the expenses of the worship of an idol; there is no direct charge of fraud, but some ridiculous and meaningless statements as to collusion between the several defendants. The plaintiffs say that their cause of action arose in Bhadra 1271, the date on which the plaintiffs became aware of the facts, and the frauds practised by the defendants. There is nothing to lead to the inference that they were not in possession jointly with Puran in 1849; that they did not know, or that they were not bound to know every thing that he, their brother and co-sharer, apparently in joint possession with them, then did. There is nothing to show that they ever had any possession since the date of the lease by Puran to Mati Lal in that year, or that having been in possession since that time the defendants ever joined in dispossessing them. In Bhadra 1271, according to the plaintiffs' own shewing, the interest of all the several defendants were perfectly separate and distinct. We think that the suit was most properly dismissed by the first Court as being multifarious.

We reverse the decision of the Subordinate Judge, and dismiss the suit with costs in all the Courts.