

Before Mr. Justice Sale.

1894
December 1. SREENATH BANERJEE v. EAST INDIAN RAILWAY COMPANY.*

Written Statement—Verification of written statement—Verification on behalf of Corporation—Principal officer of Corporation or Company—Civil Procedure Code (Act XIV of 1882), sections 115, 435—Practice—Waiver of objection to verification.

The Civil Procedure Code, by sections 115 and 435, enables a principal officer of a Corporation to verify a plaint or written statement, and it is therefore not necessary that permission for that purpose should be obtained; but it should be shown in cases to which section 435 applies that the person purporting to verify a plaint or a written statement on behalf of a Corporation or Company is a principal officer of the Corporation, and is able to depose to the facts of the case. If the plaint or written statement contains a statement to that effect, verification in the usual form would probably be sufficient.

Where suits had been filed against the East Indian Railway Company the plaints in which described the defendant Company as a Corporation, and an application was made for the admission on behalf of the defendant Company of written statements signed "The East Indian Railway Company by their constituted Attorney and Agent Richard Gardiner," who was described in the verification as the "Agent of the defendant Company," and the written statements contained no statement to the effect that he was a principal officer of the defendant Company and able to depose to the facts of the case: *Held*, that such evidence should be supplied by affidavit before the written statements could be admitted.

The provisions in the Code relating to the verification of written statements, however, being intended for the protection of plaintiffs, their observance might be waived by the plaintiffs, and if they were prepared to waive objections to the sufficiency of the verification, further evidence of the nature indicated might be dispensed with.

THIS was an application for the admission, in this and three similar suits, of written statements on behalf of the East Indian Railway Company, against whom the suits were brought and who were described in the plaints as a Corporation. The written statements were signed as follows: "The East Indian Railway Company, by their constituted Attorney and Agent Richard

* Application in Original Civil Suits Nos. 450, 451, 452 and 564 of 1894.

Gardiner," who was described in the verification as "Agent of the defendant Company," the verification being signed, "Richard Gardiner." The application was made to the Judge sitting in Chambers.

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Mr. *O'Kinealy* in support of the application.

Mr. *T. A. Apear* for the plaintiffs.

SALE, J.—This is an application for admission of written statements on behalf of the East Indian Railway Company in four suits instituted against the Company by various parties. These written statements purport to be signed, "The East Indian Railway Company, by their constituted Attorney and Agent Richard Gardiner," and in the verification, which purports to be signed "Richard Gardiner," he is described as the "Agent of the defendant Company." That the East Indian Railway Company is a Corporation appears from the title of the plaint in each suit. This therefore may be taken to be an admitted fact. That being so, section 435 of the Civil Procedure Code becomes applicable. Under that section, in a suit by the East Indian Railway Company, the plaint may be verified by any Director, Secretary or other principal officer of the Company able to depose to the facts of the case. This provision is also applicable to a written statement required to be filed by the defendant Company, being made so applicable by section 115 of the Civil Procedure Code. As therefore the law itself enables a principal officer of a Corporation to verify a plaint or a written statement, it is not, in my opinion, necessary that permission for that purpose should be obtained, but it should be shown, in cases to which section 435 applies, that the person purporting to verify a written statement is a principal officer of the defendant Company or Corporation, and is able to depose to the facts of the case. If a plaint, or a written statement, contains a statement to that effect, the verification in the usual form would probably be sufficient. There is no such statement appearing in the written statements now presented for admission. The description in the verification of Richard Gardiner, as Agent of the defendant Company, is itself not verified, nor, if that description alone were verified, could it be assumed that he was a principal officer of the defendant Company and able

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to depose to the facts of the case. That evidence in the case of these written statements must therefore be supplied by affidavit, and on that being done, the written statements may be presented to the Registrar for admission. The provision in the Code, relating to verification of written statements, being intended for the protection of the plaintiffs, their observance may, I think, be waived by the plaintiffs. If, therefore, the plaintiffs are prepared to waive all objections to the sufficiency of the verification of the written statements, further evidence of the nature indicated may be dispensed with.

Attorney for the plaintiff : Mr. A. G. Barrow.

Attorney for the defendant Company : Messrs. Morgan & Co.
 J. V. W.

Before Mr. Justice Sale.

1894
 July 4.

DOORGA MOHUN DASS v. TAHIR ALLY AND ANOTHER :
 AND.

TAHIR ALLY AND ANOTHER v. KOORSOMBOO AND OTHERS. *

Practice—Suit instituted on behalf of minor by next friend—Application for execution of decree by plaintiff on attaining majority and after death of next friend without complying with requirements of section 451, Civil Procedure Code.

Unless there is an absolute bar created by positive enactment, a person who has attained his full age is *prima facie* entitled to proceed with a suit instituted on his behalf during his minority, or to make any application therein, and, if necessary, the Court will as a matter of course give him leave to proceed or act in his own name.

When a person, on whose behalf a suit had been revived and carried on by his next friend, made, after attaining his majority and long after the death of the next friend, an application in his own name for execution of the decree in the suit without having complied with the requirements of section 451 of the Civil Procedure Code as to electing to proceed with the suit and obtaining leave of the Court to do so, and the application was admitted and notice of execution given to the defendant : *Held*, under the circumstances, that such omission to comply with the requirements of section 451, though an irregularity, was not a bar to the application being allowed to proceed.

An application under section 451, for leave to proceed with a suit, does not require any notice, but may be made *ex parte* at any time. Even if the applica-

* Application in Original Civil Suits Nos. 336 of 1876 and 171 of 1875.