Before Mr. Justice Wilson and Mr. Justice Pigot.

1890 *May* 27.

ALI KADER SYUD HOSSAIN ALI (PLAINTIFF) *v.* GOBIND DASS (DEFENDANT).*

Discovery—Interrogatories—Fishing questions—Suit for recovery of land—Title—Defective pleadings—Issues—Code of Civil Procedure (Act XIV of 1882), sections 112, 121—127, 146.

Interrogatories are not, in this country, to be framed to anticipate or supply defects of pleading or to ascertain the case of the other side. Where the pleading of either party is too vague, the Court may call for a further or fuller written statement, or may frame and record issues until the case raised by the pleadings is ascertained with sufficient clearness.

A plaintiff may interrogate with a view to obtain information or admission in support of his own case, and this right extends not only to his original case, but also to any answers which he has to make to the defendant's case, subject to the qualification (*inter alia*) that the interrogatories must be directed to a case on which the plaintiff has already determined and to which he has committed himself. He cannot be allowed to put fishing questions in order to try whether he can discover any flaw in the defendant's case or suggest any answer to it.

THIS was a motion in support of a summons taken out on the part of the plaintiff to consider the sufficiency of affidavits made by the defendant in answer to certain interrogatories administered to him by the plaintiff.

The plaintiff, the Nawab Bahadoor of Moorshedabad, stated in his plaint that certain tenanted land, situate and numbered 49, Strand Road, 234 and 235, Durmahatta Street, and 3, 4, and 5, Nawab's Lane at Juggernath Ghât in the town of Calcutta, and forming part of talook Sootanutty, was, on the 14th January 1874, and had, for many years prior thereto, been the absolute property of his father, the late Nawab Nazim of Bengal, Behar, and Orissa, and the plaintiff became entitled to the said land (together with other property) for his own absolute benefit under and by virtue of an indenture made between his father and himself on the date last mentioned. The plaint further stated that the said land had always been in the occupation of certain persons as the tenants thereof paying rent for their respective holdings from time to time

* Original civil suit No. 261 of 1888.

to the person or persons entitled for the time being to receive such rent; that for many years prior to the 30th August 1862 the said land was in the direct possession of the plaintiff's father, and the tenants paid their rents to his agents and servants, and that one of such tenants occupying a portion of the said land on the last-mentioned date and prior thereto was a person of the name of Itcharam, the quantity of land occupied by him being 8 chittacks and the rent paid therefor being Rs. 9-9 per annum.

The plaint further stated that by an indenture dated the 30th August 1862 the plaintiff's father farmed (amongst other property) the said land to one Heeraloll Seal (since deceased) for a period of 15 years from the date thereof, and under and by virtue thereof the said Heraloll Seal, and after his death his representatives, remained in direct possession of the land until the 30th August 1877, when they made over possession to the plaintiff as the owner of the land, and the plaintiff had been since then and still was in direct possession thereof. The plaintiff after obtaining direct possession proceeded to make a fresh settlement with the tenants, and it was then ascertained that the 8 chittacks of land formerly in the occupation of Itcharam had been increased in area by encroachment upon other lands belonging to the plaintiff to 13 chittacks, and the said 13 chittacks were at the time of the settlement found to be in the occupation of the defendant.

After mentioning the boundaries the plaint further stated that the 13 chittacks of land found in the defendant's possession were numbered as plot 16 in a survey plan prepared under the orders of Government by a special Deputy Collector appointed for that purpose. The defendant on being called upon to come to a settlement with the plaintiff or to give up possession of the land declined to do so, and had since been in possession without paying any rent to the plaintiff. The plaintiff, therefore, prayed for ejectment, mesne profits, and further or other relief.

The defendant Gobind Dass pleaded limitation in bar of suit and, without waiving that objection, further stated that he was the present owner and shebait and mohunt of the Thakôor Ram-Sittah located in a temple standing on a piece of land about 13 chittacks in area (setting out the boundaries), and that he had been in possession of the land and temple and buildings and

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Thakoor for a period of about forty-five years, and that he had never attorned to or paid rent to the plaintiff or his father, or to any other person.

Upon information and belief the defendant also stated that up to about fifty years ago there had existed on the said piece of land an old temple which was rebuilt about that time by one Rampersaud Hurropersaud at his own expense as a pious act, and that from that time down to the time when the defendant came into possession one Goomlee Dass had been the shebait and mohunt of the Thakoor, and had been and was in possession of the land and temple and had never attorned or paid rent to the plaintiff or any other person, and that the land and buildings had never been in the occupation of any one of the name of Itcharam. The defendant also denied the possession of Heeraloll Seal, or that any rent had ever been paid to him, and denied the statements contained in the plaint save and except what was expressly admitted by him.

After affidavits of documents had been filed by both parties, the plaintiff applied for, and under the leave of the Court administered certain interrogatories for the examination of the defendant as to the history of the temple and the other allegations set out in the defendant's written statement, to which the defendant filed an answer objecting to many of the interrogatories on the ground that the matters therein contained were inquisitorial, and related solely to the defendant's case and title, and in no way to the plaintiff's case or his alleged title.

The interrogatories which the defendant objected to answer were as follows:—

"2. State to the best of your knowledge, information, and belief where Rampersaud Hurropersaud named in your written statement resided; whether he is alive or dead; and what connection he had with the land the subject-matter of this suit.

"3. State . . . by whom the said Rampersaud Hurropersaud had it [the old temple] rebuilt, and whether the person or persons rebuilding the same is or are alive or dead; and if alive, where he or they may be found.

"5. State, similarly, under what circumstances you obtained possession of the "said land and temple and buildings and Thakoor"

mentioned in the said second paragraph of your said written statement.

"6. State, similarly, if you were ever appointed shebait and mohunt of the Thakoor mentioned in the said third paragraph of your said written statement. If aye, state to the best of your knowledge, information, and belief by whom were you so appointed, and when and how was such appointment evidenced.

"7. If the said appointment was evidenced by any instrument in writing, state to the best of your knowledge, information, and belief in whose power, possession, or control such instrument now is, or in whose possession, power, or control you last saw the same.

"8. If you state in answer to the latter part of the 6th interrogatory that such appointment was not evidenced by any writing, then state to the best of your knowledge, information, and belief in whose presence was such appointment made, and whether the person or persons in whose presence such appointment was made is or are alive or dead; and if alive, where he, she, or they may be found.

"11. State to the best of your knowledge, information, and belief how old you were when you obtained possession of 'the said land and temple and buildings and Thakoor.'"

The plaintiff applied for a summons to compel the defendant to answer the above interrogatories fully and sufficiently.

At the hearing of the application, Mr. *Pugh* and Mr. *Ameer Ali* appeared for the plaintiff and Mr. *Dunne* for the defendant. The Court (WILSON, J.,) after hearing arguments on both sides decided to have the matter reargued before a Bench of two Judges, the points raised being of considerable importance.

On the 29th April the Court (WILSON and PIGOT, JJ.) sat to hear the further arguments.

Mr. *Pugh* and Mr. *Bonnerjee* appeared for the plaintiff in support of the summons, and Mr. *Dunne* appeared for the defendant.

Mr. *Bonnerjee*.—This case is different from the usual cases in ejectment. Here the plaintiff as a zemindar is entitled, on finding a person in possession, to claim rent from him. I rely upon the case of *Kripamoyi Dabia* v. *Durga Govind Sirkar* (1) and the cases

(1) I. L. R., 15 Calc., 89.

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there cited as showing that it is for the tenant to prove that he is not liable for rent. This is a zemindary forming part of talook Sootanutty as set out in the plaint. If I prove that this is my zemindary, then the onus will lie on the defendant. [Mr. *Dunne*.—There is no allegation as to this in the pleadings. Part of the talook is vested in the Sobha Bazar Rajahs.] These interrogatories are preliminary to the plaintiff proving his case. The presumption I claim will only arise on my proving that the land is within my zemindary. The principle enunciated in *Lyell* v. *Kennedy* (1) clearly lays down a proposition entitling me to an answer here. There is no difference between an action in ejectment and any other action. That case is also an authority that whether the plaintiff claims on legal or equitable grounds, his right is the same. I rely on the case of the *Attorney-General* v. *The Corporation of London* (2) to show that a plaintiff may administer interrogatories in support of his own case, or to repel the defendant's case, or to obtain admissions from the defendant, and he is entitled to ask the defendant what his defence is and the manner in which he means to support it, but not to see the proofs by which his case is to be established. [PIGOT, J.—He is to be confined to establishing his own substantive case, and cannot seek a discovery of the evidence on the other side—*vide* the remarks of Kay, J., in *Bidder* v. *Bridges* (3).] We want to discover, not his proofs, but the nature of his defence, and I can repel his defence by showing that some one else was in possession as my tenant, and that he holds from him. To make his title stronger than that of the defendant the plaintiff may interrogate as to every thing but evidence. In *Lyell* v. *Kennedy* (1) Lord Selborne at page 225 refers to the two cardinal rules as laid down by Wigram on Discovery, 2nd Ed., 1840, p. 14, and I rely upon his statement of the law (pp. 223-229), and Lord Bramwell goes even further (pp. 229-230). Interrogatories 2 and 3 are relevant to the plaintiff's case. The language the defendant has used in refusing to answer is not sufficient according to the authorities—*Minet* v. *Morgan* (4). He should allege that they do

(1) L. R., 8 Ap. Ca., 217.

(2) 2 M. & G., 247.

(3) L. R., 29 Ch. D., 29 (34).

(4) L. R., 8 Ch. Ap., 361.

not go to support the plaintiff's case. The case of *Towne* v. *Cocks* (1) is also in my favour. If limitation is set up the plaintiff is entitled to ask the defendant when he came into possession. The cases are to be found collected in Sichel and Chance on Discovery, at pp. 94-99. [PIGOT, J., referred to the remarks of Jessell M. R. in *The Attorney-General* v. *Gaskill* (2) at p. 527.] I would also refer to the case of *Bemolemoney Dassee* v. *Hullodhur Bullub* (3), where Lord Cottenham's observations in *The Attorney-General* v. *The Corporation of London* (4) are cited with approval.

Mr. *Dunne* for the defendant:—The principle has never been decided in any of the cases cited that the plaintiff is entitled to know more than a bare statement of what the defendant says his case is. The rule is fined down in *The Attorney-General* v. *The Corporation of London* (4) at p. 262, and even there all that was decided was that the plaintiff was entitled to obtain admissions and information from the defendant which would prove the plaintiff's own case. In that case no title of any kind was pleaded by the defendant, and, as has been pointed out in *Horton* v. *Bott* (5), which is expressly in point in this case, *The Attorney-General* v. *The Corporation of London* was decided on special grounds. The rule laid down in *Lyell* v. *Kennedy* (6) does not affect the question here, as all that was there laid down was that in an action of ejectment the plaintiff is entitled to the discovery of matters relevant to his own case, and it simply extends to actions in ejectment the same right to interrogate as was laid down in *The Attorney-General* v. *Gaskill* (2), as existing in an action other than in ejectment. Here the plaintiff wishes to know how we make out our title, and his interrogatories are entirely directed to that object, and are of an inquisitorial or fishing character. *Horton* v. *Bott* (5) is distinctly approved of in *Lyell* v. *Kennedy* (6), and is stated to have been rightly decided, and it is an express authority for the proposition that a plaintiff in ejectment is not entitled to interrogate as to the title of the defendant in possession. As to the case of *Towne* v. *Cocks* (1) it is referred to in the arguments in *Lyell* v. *Kennedy* (6), and if it can be said to be in conflict with

(1) L. R., 9 Ex., 45.
(2) L. R., 20 Ch. Div., 519.
(3) Boulnois, 618.
(4) 2 M. & G., 247.
(5) 2 H. & N., 249.
(6) L. R., 8 Ap. Ca., 217.

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Horton v. *Bott* (1) it must be taken to have been overruled to that extent. The case of *The Attorney-General* v. *Gaskill* (2) was not a case of ejectment, and goes no further than to show that the plaintiff is entitled to discovery of material facts which are part of and tend to prove his own case. *Minet* v. *Morgan* (3) is no authority for the proposition that our answers should expressly state that these matters do not support the plaintiff's case. That was a case of the right to discovery by the defendant, and the question was not as to whether the plaintiff was compellable to answer as he did, but whether, having made certain statements, they afforded a sufficient answer to the discovery claimed. The case of *Emerson* v. *Ind Coope & Co.* (4) is also a case of discovery, and shows that it is sufficient to answer that the matters in question relate solely to the defendant's case, and the plaintiff is not thereupon entitled to discovery for the sole purpose of showing that the defendant has not a title. In that case also the defendants relied upon their possession, as we do here. In *Ivy* v. *Kekewick* (5) the demurrer was allowed on the ground that it was a fishing bill to know how a man made out his title as heir, and the defendant was not obliged to tell the plaintiff how he was to make it out. In *Bidder* v. *Bridges* (6), Kay, J., after referring to Wigram on Discovery and most of the authorities cited in the present case, disallowed the summons, saying that the interrogatories were in effect directed to the discovery of the evidence by which the plaintiffs intended to prove their case at the hearing. I submit that these interrogatories are of the same nature, and this furnishes a conclusive answer to the application.

Mr. *Pugh* in reply:—The rule is correctly stated in *The Attorney-General* v. *Corporation of London* (7) at pp. 256 and 263 of the report. Some of the interrogatories are open to objection, but we are entitled to get admissions, or to repel the defendant's case, or to support our own. I contend that I am entitled to know not only the nature of the case, but the facts on which the defendant relies, in order that I may know what case I have to meet—not the evidence, but what the defence is. *Eade* v. *Jacobs* (8). We are entitled to know the facts.

(1) 2 H. & N., 249.
(2) L. R., 20 Ch. Div., 519.
(3) L. R., 8 Ch. Ap., 361.
(4) L. R., 33 Ch. Div., 323.
(5) 2 Ves. Jr., 679.
(6) L. R., 29 Ch. D., 29.
(7) 2 M. & G., 247.
(8) L. R., R., 3 Ex. D., 335.

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The judgment of the Court (WILSON and PIGOT, JJ.) was delivered by

WILSON, J.—The plaintiff in this suit seeks to recover a plot of land and sets out his alleged title to it in the plaint. The defendant, in answer, relies upon the law of limitation as a bar to the plaintiff's claim and also asserts a title in himself, the particulars of which are given in the written statement. The plaintiff obtained leave to interrogate the defendant, and filed his interrogatories accordingly. The defendant, by his affidavit, answered certain of the interrogatories, and objected to others as being questions which he was not bound to answer. Those objected to are the second, part of the third, part of the fifth, the sixth, seventh, eighth, and eleventh. The matter comes before us on a summons taken out by the plaintiff to consider the sufficiency of the answers. And the question is whether the defendant is bound to answer the interrogatories to which he has objected. As to some of these interrogatories it was admitted by the learned counsel for the plaintiff that they could not be supported, for it was admitted that their effect was to ask the defendant by what evidence he intended to support his case. The rest of the interrogatories were insisted upon. It is not necessary to refer to the questions in detail: it is enough to say that they have all one characteristic in common. They all refer to, and are based upon, not matters alleged in the plaint as part of the case of the plaintiff, but matters alleged in the written statement as part of the case of the defendant.

It was sought to support these interrogatories on two distinct grounds. First, it was contended, on the strength of English authorities, that a plaintiff may interrogate a defendant in order to ascertain with sufficient clearness, and in sufficient detail, what the case of the defendant is which he has to meet at the hearing. Such interrogatories are really framed to anticipate or supply defects of pleading. Interrogatories for this purpose have undoubtedly been frequently allowed in England; but this has been the result of the systems of pleading and procedure prevailing in English Courts of several kinds. The system of procedure in this country differs widely from anything that has ever prevailed in England, and under the Procedure Code two modes are specially provided for

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meeting the difficulty in question. If the pleading of either party is too vague, the Court may require him to file a further and fuller written statement under section 112. This method is not, so far as we know, in use in this province outside Calcutta; but in this Court it has several times been adopted. The other method provided by the Code is the settlement of issues. By section 146, "at the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to the Court to depend." This is the provision under which, not in this Court only, but in the mofussil as well, the case raised on the one side and on the other, by the plaint and written statement, is ordinarily ascertained with the necessary precision. If, under the system of procedure in force in this country, we were to allow interrogatories to be used by one party in order to ascertain with sufficient clearness the case of the other side, we should, we think, be misapplying the English authorities, following the decisions and overlooking the reasons on which they were based. We should further be introducing a practice wholly novel, so far as we know, unnecessary, and likely to prove very inconvenient. Moreover, if in any case such a use of interrogatories were allowable, they would not, we think, be so in this case, for we do not think the written statement is open to exception on the ground of insufficiency of information as to the case set up.

The second ground upon which it was sought to support these interrogatories was this. It was said that a plaintiff may interrogate with a view to obtain information or admissions in support of his own case, and that this right extends, not only to his original case, but also to any answer which he has to make to the defendant's case. With proper qualifications this may be accepted as correct. But, amongst other qualifications, it is always subject to this qualification, that the interrogatories must be directed to a case on which the plaintiff has already determined, and to which he has committed himself. He cannot be allowed to put fishing

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questions in order to try whether he can discover any flaw in the defendant's case or suggest any answer to it. If this test be applied, it is clear, we think, that the interrogatores in question are inadmissible. The summons must therefore be dismissed with costs.

The same considerations govern the case of the same plaintiff *v. Hurdeb Das*, in which also the summons must be dismissed with costs.

Summons dismissed.

Attorneys for the plaintiff: Messrs. *Remfry & Rose.*

Attorneys for the defendant: Messrs. *Swinhoe & Chunder.*

A. A. C.

APPELLATE CIVIL.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Rampini.

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SATIS CHUNDER MUKHOPADHYA (DEFENDANT) *v.* MOHENDRO LAL PATHUK, MINOR, THROUGH HIS GUARDIAN PATU MONDUL (PLAINTIFF).*

Evidence Act (I of 1872), *ss.* 32, *clause* (6), 35—*Certificate under Act XL of* 1858—*Horoscope—Minority.*

A certificate of guardianship under Act XL of 1858 is no evidence of minority under section 35 of the Evidence Act (I of 1872), being neither a book nor a register nor a record kept by any officer in accordance with any law.

In a suit to set aside a decree on the ground of minority the plaintiff relied upon a horoscope to prove his age. *Held*, following *Ram Narain Kallia* v. *Monee Bibee* (1), that the horoscope was not admissible under section 32, clause 6 of the Evidence Act.

THIS was a suit brought to set aside a decree obtained against the plaintiff on the 3rd April 1888 by the present defendant in a suit upon a bond alleged to have been executed by the plaintiff in favour of the defendant's father, and to have the bond declared invalid upon the ground that the plaintiff at the time of the alleged execution of the bond and at the date of the decree was a minor.

* Appeal from Appellate decree No. 1082 of 1889, against the decree of J. Whitmore, Esquire, Judge of Beerbhoom, dated the 2nd of April 1889, modifying the decree of Baboo Shambhu Chunder Nag, Munsif of Suri, dated the 26th November 1888.

(1) I. L. R., 9 Calc., 613.