

ORIGINAL CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Broughton.

IN THE MATTER OF UPENDRO LALL BOSE, AN ATTORNEY.

1880
Aug. 14 &
Sept. 3.

Practice—Verification of Plaint—Information and Belief—Personal Knowledge—Civil Procedure Code (Act X of 1877), ss. 50, 51—Act XII of 1879, s. 11.

In all cases, whether a plaint is verified by the plaintiff or by some other person, the party verifying should state shortly what paragraphs he verifies of his own knowledge, and what paragraphs he believes to be true from the information of others.

IN this case a rule had been obtained calling upon Baboo Upendro Lall Bose, an attorney of the High Court, to show cause why he should not be suspended from practising for having improperly verified a plaint in the suit of *Jodoonath Law v. Prokash Chunder Mitter*. The plaint in that suit, which was for an account and for sale of certain properties and for other relief, stated an assignment by the defendant to one Mohindro Lall Mitter of the share of the defendant in certain Government securities and in certain zemindaries, and a subsequent assignment by the defendant to the plaintiff of the balance of his share in the same properties after payment of the amount due to Mohindro Lall Mitter. The plaint further stated that notice of the assignment had been given to the kurta of the family to which the defendant belonged, and also to Mohindro Lall Mitter; that the defendant had subsequently conveyed the whole of his property to one Rajendro Dutt, who had paid off Mohindro Lall Mitter; and that there was a sum of Rs. 2,091-8 due to the plaintiff for principal and interest. The plaint was signed by Jodoonath Law by his constituted Attorney Upendro Lall Bose.

The verification was as follows:—“I, the plaintiff abovenamed, do declare, that what is stated in the foregoing plaint is true

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to my knowledge, except as to matters stated on information and belief, and as to those matters I believe it to be true.

JODOONATH LAW,

by his constituted Attorney,

Upendro Lall Bose.

At the hearing of the suit, Upendro Lall Bose was called as a witness by the Court and stated as follows:—

“ About two years ago, Brojonath Sen called at my house and enquired about a certain deed of assignment executed by Prokash Chunder Mitter in favour of Mohindro Lall Mitter, and after that told me to draft a deed, and said three promissory notes were owing. I did draft the deed. I don't know what took place with the draft, which I handed to Brojonath Sen, after that. It might be at the beginning of August. Brojonath Sen produced *A* (the first deed) to me, and told me to take notice of it. Prokash was not there. It was produced to me at my house. I did not see it executed or any money lent. It was brought to me after execution to give me notice of its execution as I was acting for Mohindro Lall Mitter. I verified the plaint as the constituted attorney of Jodoonath Law from information I received. I state about the execution of the deed from information. I was told by Brojonath Sen about its execution. When the plaint was drawn I was not constituted attorney. The verification is in the usual form. I got the power in January or December, and the plaint was drawn in September. I am an attorney of this Court. I only knew personally about the execution of the first deed in favour of Mohindro Lall Mitter. I also know of the notice given by Brojonath Sen of the execution of *A* to me as attorney of Mohindro Lall Mitter. I have not compared *A* with the draft. I drafted it at home, and made the draft over immediately to Brojonath Sen. I know the contents of the fourth and fifth paragraphs of the plaint from information and belief. The first paragraph I know personally. As to the second, I know I drafted the deed, and the rest I know from information received from Brojonath Sen. I did not compare the draft with *A*. I speak from recollection that it

corresponds with my draft. As to the third, fourth, and fifth paragraphs, I make the statements from information received, as to the sixth paragraph that appears on the face of the deed and from calculations made from it. The plaintiff resides in Aheerretollah Street in Calcutta. I cannot say how long he has resided there. When the plaint was filed he was residing at Bankipore. I cannot say how long he had been there. I was told he was ill by Brojonath Sen."

Mr. *Kennedy* and Mr. *Hill* showed cause.

The judgment of the Court (GARTH, C.J., and BROUGHTON, J.) was delivered by

GARTH, C. J.—There is no doubt that the plaint in this case has been verified in an irregular way; but having heard Mr. Kennedy's explanation, we have already informed him, in the course of the argument, that we entirely acquit his client of any intentional impropriety.

The mistake which he has made in the form of verification has evidently arisen from his confounding the permission to verify the plaint itself, which is provided for by s. 51 of the Code, with the power to sign the plaint on behalf of his client, which is provided for in the addition to that section made by the amending Act XII of 1879, s. 11.

He obtained leave upon the usual petition to verify the plaint himself, and then, instead of doing so, he signed the plaintiff's own name to the verification, describing himself as the plaintiff's attorney for that purpose.

The result is, that neither the plaintiff nor his attorney could be made criminally responsible for any false statements there may be in the plaint.

If Upendro Lall Bose really meant, having obtained the leave of the Court for that purpose, to verify the plaint himself, he should have signed the verification on his own account, and not as the plaintiff's attorney.

If he meant to sign the verification merely as the plaintiff's attorney, the plaintiff himself ought to have seen the plaint and verification, and authorized the attorney to sign the verification for him.

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The discussion which has taken place upon these points has raised a question of very general importance as to what should be the form of verification. We have taken occasion to consult some of the other Judges upon it, and we think that it may probably be found necessary to frame a rule or rules upon that subject. Meanwhile, we think that, in all cases, whether the plaint is verified by the plaintiff or by some other person, the party verifying should state shortly what paragraphs he verifies of his own knowledge and what paragraphs he believes to be true from the information of others.

This is the form of verification used in affidavits for the purpose of interlocutory applications (see s. 196 of the Code of Civil Procedure). There is no inconvenience, so far as we are aware, in adopting it, and it is really the only means of securing anything like truthful statements in the plaint.

The rule against Upendro Lall Bose will, of course, be discharged, and he is entirely acquitted of all blame which can affect his character.

SMALL CAUSE COURT REFERENCE.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Pontifex.

BUDDREE DOSS AND OTHERS *v.* RALLI AND ANOTHER.*

1881
Feb. 8.

Contract—Breach of Contract—Time for Performance.

A contract for the sale of seed contained the following provision:—"Refraction guaranteed at four per cent., with usual allowance up to six per cent., exceeding which the seller is to reclean the seed at his expense within a week; failing which buyers to have the option of cancelling that portion of the contract tendered, or of buying against the seller, or of taking the parcel as it stands, with usual allowance for excess refraction. Delivery from seller's godown in pile up to the 15th of July next." On the 10th July, the vendor tendered the seed. On examination the refraction was found to be above the contract rate. It was agreed that the vendor should reclean the seed; and on

* Case stated for the opinion of the High Court under the provisions of Act XXVI of 1864 by H. Millett, Esq., First Judge of the Calcutta Court of Small Causes.