APPEAL FROM ORIGINAL CIVIL.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, Mr. Justice Harington and Mr. Justice Fletcher.

1908
Jan. 3.

INDIA PUBLISHERS, LIMITED
v.
ALDRIDGE.*

Libel, suit for—Misjoinder of causes of action—Misjoinder of parties—Election—Limitation—"Cause of a like nature"—Limitation Act (XV of 1877), s. 14.

Six persons, on the 26th January 1906, instituted a suit jointly against an editor and proprietor of a newspaper for libels published on the 17th and 20th July 1905 and claimed an aggregate sum as damages.

The suit was, on the 22nd April 1907, held to be bad for misjoinder of parties and causes of action, but the Court gave the plaintiffs leave to elect, which of their number should continue the suit, and the other co-plaintiffs' names were struck out.

Subsequently, on the 1st May 1907, one of the former plaintiffs filed a suit for libel and damages, and it was contended that his suit was barred by limitation.

Held, that section 14 of the Limitation Act was not intended to apply to a case, in which a first suit failed entirely through the negligence and laches of the plaintiff himself, and that an improper joinder of parties or of causes of action would not be "a cause of like nature" within the meaning of section 14 of the Limitation Act, and therefore the plaintiff's suit was barred by limitation.

Chunder Madhub Chuckerbutty v. *Bissessuree Debea*(1), *Deo Prosad Sing* v. *Pertab Kairee*(2), *Mullick Kefait Hossein* v. *Sheo Pershad Singh*(3), *Assan* v. *Pathumma*(4), *Bai Jamna* v. *Bai Ichha*(5), *Mathura Singh* v. *Bhawani Singh*(6), referred to.

APPEAL by the defendant, Albert Stuart Barrow and the India Publishers, Limited, from the judgment of CHITTY J.

This was a suit instituted by a police officer named Aldridge against the India Publishers, Ld., for printing and publishing certain articles in its paper charging him and five other police officers with matters grossly defamatory. Originally the plaintiff

* Appeal from Original Civil No. 49 of 1907 in Suit No. 317 of 1907.

(1) (1866) 6 W. R. C. R. 184.
(2) (1883) I. L. R. 10 Calc. 86.
(3) (1896) I. L. R. 23 Calc. 281.
(4) (1899) I. L. R. 22 Mad. 494.
(5) (1886) I. L. R. 10 Bom. 604.
(6) (1900) I. L. R. 22 All. 248.

instituted a suit jointly with five other police officers on the 26th January 1906 against the India Publishers, Ld., and one B. S. Barrow, the editor of that paper, claiming the sum of Rs. 20,000 as damages suffered and injury done to their credit and reputation by publishing and printing certain defamatory matters. In that suit the defendants submitted that there was no cause of action, inasmuch as the plaintiffs had been improperly joined as parties to the same suit; this contention was upheld by Chitty J., who on the 22nd April 1907 held that one of the parties was to elect to continue the suit alone and the other five plaintiffs were to file separate suits. Hem Chunder Lahiri was eventually elected to proceed alone. Thereafter the plaintiff, Aldridge, instituted this suit on the 1st May 1907 claiming as damages Rs. 5,500 and submitted that his suit was not barred by limitation, his contention being that in computing the prescribed period, viz., from the 26th January 1906 to the 22nd April 1907, during which time the six plaintiffs were prosecuting their suit in good faith and with due diligence, the suit of January 1906 founded on the same cause of action should be excluded. The contention for the defence was that the suit was barred by limitation.

The judgment of the Court below, which was delivered on the 8th July 1907, was as follows:—

CHITTY J. This and the four following suits have been filed by the five plaintiffs, who elected to be struck out of suit No. 93 of 1906, in which judgment has just been delivered. They now, in these five suits, severally claim damages for the same libel as that complained of in the earlier suit. There is a slight difference in the form of suit, inasmuch as in these five suits the Editor of the Indian Daily News has not been made a party defendant. The suits are against the proprietors alone. The first point which arises, which, being common to all five suits, may be conveniently disposed of in one judgment, is that of limitation. The libels complained of were published on the 17th and 19th July 1905. These five suits were filed on 1st May 1907. If therefore the period during which these five plaintiffs were prosecuting the former suit, No. 93 of 1906, is not excluded, these suits are clearly barred. If it is to be excluded, the plea of limitation fails. I may say at once that the earlier suit was in my opinion prosecuted with due diligence. It was suggested that the point of misjoinder having been taken in the written statement filed on 28th March 1906 and brought to the plaintiffs' notice on that date, the plaintiffs should have taken immediate steps to have it decided. I cannot see that there was any obligation on them to do this. The suit took its natural course, and the point

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came up for decision at the proper time, namely, as a preliminary point after settlement of issues. There was no want of *bonâ fides* in the course taken by the plaintiffs and no want of diligence on their part in the prosecution of the former suit. The sole point then for determination on this issue is whether a misjoinder of parties and causes of action is to be regarded as a "cause of a like nature" to "defect of jurisdiction," within the meaning of section 14 of the Limitation Act (XV of 1887). Were the matter "res integra" I might have been inclined to accept the defendants' contention. It would at any rate be an arguable point not wholly free from difficulty. The matter is however, so far as I am concerned, concluded by authority. In *Deo Prosad Sing* v. *Pertab Kairee*(1), it was distinctly laid down by a Divisional Bench of this Court that misjoinder of and causes of action were causes of a similar nature to defect of jurisdiction. The same view was taken in *Mullick Kefait Hossein* v. *Sheo Pershad Singh*(2), where however different causes of action against different sets of defendants were improperly joined in one suit. The decision first above cited has been unreservedly accepted by a Full Bench of the Allahabad High Court in *Mathura Singh* v. *Bhawani Singh*(3). The Madras High Court has also now adopted the same view, though their decisions have not throughout been uniform, see *Venkataratnam Naidu* v. *Ramaraju*(4), and the earlier cases discussed by the Allahabad Court in the ruling above cited. Under these circumstances, it is clear that my decisions in these five suits on the point of limitation must be in favour of the plaintiffs. By consent the evidence taken in Suit No. 93 of 1906 is to be read as having been taken in this and the four following suits. The questions arising in these five suits (other than that of limitation) are the same *mutatis mutandis* as those arising in Inspector H. C. Lahiri's suit. I refer therefore to my judgment in that suit and refrain from going over the same ground again. The issue as to fair comment, which is common to all suits, is decided against the defendants. The question peculiar to this suit is, whether Superintendent Aldridge is sufficiently indicated by the libels to enable him to recover. He was certainly one of the officers engaged in the investigation, and was the Superintendent in charge of the Division, in which the murder took place. It is true that he left for Darjeeling on a month's leave about 16th June 1905 and so was not here during the trial at the Sessions. The case however was complete by about 8th June 1905, and nothing additional appears to have transpired after that date. Mr. Dansdale of the Tramways Company has been called with especial reference to Superintendents Aldridge and Ellis, and has sworn that he took the articles, which he read as they came out, to refer to these officers as being to his knowledge in charge of the enquiry. Mr. C. C. Cameron's evidence was to the same effect. I may say at once of these and similar witnesses, that I accept their statements in this respect. It is only reasonable to suppose that such would be the case. Several of the witnesses, especially those imperfectly acquainted with English, no doubt became confused in cross-examination, when asked to point out any express reference to any particular officer. That of course they were unable to do, as the articles contain no such reference. But that the

(1) (1883) I. L. R. 10 Calc. 86.
(2) (18 I. L. R. 23 Calc. 821.
(3) (1900) I. L. R. 22 All. 248.
(4) (1901) I. L. R. 24 Mad. 361.

friends and acquaintances of these officers would take the articles to be aimed at them, would be by no means improbable. Taking all the evidence into consideration, I find that Superintendent Aldridge is one of the persons indicated by the articles. As to the damages, as I intimated in the case just decided, the amount is not of the first importance. Having regard to the plaintiff's position, I think that a sum of Rs. 500 will meet the requirements of the case. For that sum there will be a decree with the costs of the suits.

From this judgment the defendants appealed.

Mr. Morison (*Mr. Pugh* with him), for the appellants.

The Court has jurisdiction to entertain the suit brought by the police originally jointly. If the Court had no jurisdiction to entertain it, then the Court must have thrown out Lahiri's suit alone, which it did not do. The lower Court however decided it had jurisdiction to entertain the suit, but not jointly, and gave leave for one plaintiff to sue alone. The lower Court followed the case of *Deo Prosad Sing* v. *Pertab Kairee*(1), which is contrary to the ruling in the Full Bench case of *Chunder Madhub Chuckerbutty* v. *Bissessuree Debea*(2). See also *Hosan Ali* v. *Mah Reban*(3). Section 14 of the Limitation Act does not apply, therefore the subsequent five suits filed are barred by limitation. *Jema* v. *Ahmad Ali Khan*(4), *Tirtha Sami* v. *Seshagiri Pai*(5).

Mr. Garth (*The Standing Counsel, Mr. Sinha, Mr. Chakravarti* and *Mr. S. C. Mitter* with him), for the respondent.

The case of *Deo Prosad Sing* v. *Pertab Kairee*(1) has been dealt with in the Full Bench case of *Mathura Singh* v. *Bhawani Singh*(6), and that case discusses all the other cases cited by the other side. See also *Venkataratnam Naidu* v. *Ramaraju*(7), and Chitty on Pleadings, 7th edition, vol. I p. 219. The latest case in this Court is *Mullick Kefait Hossein* v. *Sheo Pershad Singh*(8). It cannot be said that we were guilty of want of good faith and lack of due diligence in bringing that joint suit. I submit also that upon the authorities this suit is not barred by limitation.

Mr. Morison, in reply.

Cur. adv. vult.

(1) (1883) I. L. R. 10 Calc. 86.
(2) (1866) 6 W. R. C. R. 184, 186.
(3) (1880) I. L. R. 2 All. 625.
(4) (1890) I. L. R. 12 All. 207.
(5) (1893) I. L. R. 17 Mad. 299.
(6) (1900) I. L. R. 22 All. 248.
(7) (1901) I. L. R. 24 Mad. 361.
(8) (1896) I. L. R. 23 Calc. 821.

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MACLEAN, C.J. This is an action for libel.

So far as the merits are concerned, it is governed by the judgment just delivered in the case of *Lahiri* v. *The Indian Daily News* (1); and I need not say anything more about that.

The only question argued on this appeal is, whether or not the suit is barred by limitation.

The facts are these:—

On the 26th January 1906, the present plaintiff, with five other members of the Calcutta Police Force, instituted a suit for libel against the defendants, claiming an aggregate sum for damages. To that suit the defendants, by their defence, dated the 28th March 1906, pleaded misjoinder of parties and of causes of action, and that plea was upheld by Mr. Justice Chitty on the 22nd April 1907. He, however, gave the plaintiffs leave to elect which of their number should continue the suit, the other plaintiffs, with their cause of action, being struck out. The plaintiffs elected that Inspector Lahiri should continue that suit, and the other plaintiffs were struck out. They have filed five separate suits, with one of which, that of Superintendent Aldridge, we are now concerned.

This suit, which is against the proprietor of the newspaper alone, was instituted on the 1st May, 1907: the libels were published on the 17th and 20th July, 1905: unless the period, during which the present plaintiff was prosecuting the former suit, can be excluded, the present suit is clearly barred. This is the question we have to decide, and it depends upon the true meaning of section 14 of the Indian Limitation Act. That section runs as follows:—"In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action, and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it."

What is meant by the words "a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain

(1) (1908) I. L. R. 35 Calc. 495.

it"? The language is not, "unable to decide upon it", as in Act XIV of 1859. It is clear that the Court, in which the first suit was brought, had ample jurisdiction to deal with that suit. It exercised that jurisdiction by striking out the present plaintiff as one of the plaintiffs in that suit We cannot say that "from defect of jurisdiction it was unable to entertain it." It did in fact entertain it, and held that the suit could not proceed, not from any lack of jurisdiction in the Court, but because the suit was improperly framed.

Can it then be said that the Court was unable to entertain the first suit "from some other cause of a like nature to defect of jurisdiction"?

One of the meanings attached to the word "entertain" in Webster's International Dictionary is "to receive and take into consideration." The Court did receive the first suit, and did take it into consideration, and held that, in its then form, it would not lie. In my opinion the Court was able to, and did in fact, entertain it, though it could not decide it on its merits.

There is a marked difference between the language of the Act of 1859 and that of the existing Limitation Act. In the present Act the words are "unable to entertain"; in the previous Act the words are "unable to decide upon it". A Court may be able to entertain a suit in its inception, but be unable to decide it on the merits, owing to some defect, not in jurisdiction, but in procedure. There must have been some reason for this change of language, and a possible reason is that the Legislature intended to limit the benefit of the section to cases, where the Court had no power to embark upon the case at all.

Assuming, however, the Court was unable to entertain it, can it be properly said that it was unable to entertain it by reason of a cause of a nature like to that of defect of jurisdiction? The cause here was the improper joinder of parties and of causes of action: it would, I think, be straining the language of the section to say this was a cause of a like nature to defect of jurisdiction. But, I think, a more conclusive answer to the respondent's contention is that the Court could entertain, and did entertain, the suit, though it could not decide it on the merits. It is not unworthy of notice that the present plaintiff knew, on the 28th March 1906,

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from the defence, that the objection, which prevailed, would be taken: had he then applied to have the pleadings amended by striking his name out as a plaintiff, he would have had plenty of time within which to bring his present action. The Court could have entertained that application and so entertained the suit for that purpose.

The learned Judge in the Court of first instance seemed to think that the case was concluded by authority: let us see how they stand.

An early and important Full Bench decision of this Court which, if in point, is binding upon us does not seem to have been cited. I am referring to the case of *Chunder Madhub Chuckerbutty* v. *Bissessuree Debea*(1). There it was held by a majority of the Court, including the Chief Justice, Sir Barnes Peacock, that a plaintiff is not entitled to deduct the time occupied by him in prosecuting a former suit, in which he was non-suited.

There the Chief Justice says:—"It appears to me that, where a plaintiff is non-suited, he cannot be said to have prosecuted *bonâ fide*, &c., with due diligence. Further, I am of opinion that the words "or other cause" must mean a cause of like nature, as defect of jurisdiction would be a cause that would not include any neglect on the part of the plaintiff, either in stating his case or in other respects. For instance, if the plaintiff should fail to appear or produce his witnesses on the day fixed for the hearing, the Court would be unable to decide upon his cause of action. But that would not be a cause for which time ought to be deducted under the section, for it could not be said that the plaintiff was prosecuting his suit *bonâ fide* and with due diligence, or that the Court was prevented by want of jurisdiction or other cause not connected with the plaintiff's own negligence from deciding upon the case."

I do not think that a plaintiff can be said to have prosecuted a suit with due diligence when, owing to his own default, the suit is so framed that the Court cannot try it out on the merits.

The language in section 14 of Act XIV of 1859 is not altogether similar to section 14 of the present Limitation Act.

(1) (1866) 6. W R. (C. R.) 184.

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The dissimilarities, for the purpose of the present discussion, are "other cause", instead of other cause of a "like nature" and "shall have been unable to decide upon it" instead of "unable to entertain it." This change of language does not tell in favour of the present plaintiff.

The next case in this Court is that of *Deo Prasad Singh* v. *Pertab Kairee*(1). It is difficult to reconcile this decision with the Full Bench one, which was binding on the Division Bench.

The next case is that of *Mullick Kejait Hossein* v. *Sheo Pershad Singh*(2). This is in favour of the plaintiff, but the Court there declined to lay down any general proposition on the subject. These are all the cases in this Court.

The cases in the Madras High Court are somewhat conflicting; but the later cases [I may refer to *Assan* v. *Pathumma*(3)] support the view taken in *Mullick* v. *Sheo Pershad Singh*(4). In *Assan* v. *Pathumma*(3) the Full Bench case in this Court was not cited. The only case I can find in the Bombay High Cour is that of *Bai Jamna* v. *Bai Ichha*(5), where Sir Charles Sargent, C. J., appears to have supported the principle of the Full Bench case in this Court.

In the Allahabad High Court there have been differences of opinion, but in the latest case, *Mathura Singh* v. *Bhawani Singh*(6), the Court took the same view as in the case of *Deo Prasad Singh* v. *Pertab Kairee* (1). In the Allahabad case the Chief Justice read "unable to entertain" as substantially identical with "unable to decide". But I have pointed out the distinction in language in the two Statutes.

In this conflict of judicial view I feel constrained to express my opinion with considerable diffidence. I, however, agree with Sir Barnes Peacock and Sir Charles Sargent, and I do not think that the section was intended to apply to a case, in which the first suit has failed entirely by reason of the negligence and laches of the plaintiff himself; in other words, I do not think that an improper joinder of parties or of causes of action is "a cause of like

(1) (1883) I. L. R. 10 Calc. 86.
(2) (1896) I. L. R. 23 Calc. 821.
(3) (1899) I. L. R. 22 Mad. 494.
(4) (1896) I. L. R. 23 Calc. 821.
(5) (1886) I. L. R. 10 Bom. 604, 608.
(6) (1900) I. L. R. 22 All. 248.

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nature" within the meaning of section 14 of the Limitation Act. So to hold would be putting a premium on carelessness and laches. If a plaintiff, with the Code staring him full in the face, and through his own negligence, so frames his suit as to prevent the Court from deciding it on the merits, which to my mind is a different thing from entertaining it in its inception, I do not think he can claim the benefit of section 14. I am not much impressed with the argument that, if a plaintiff brings his suit in a Court, which cannot entertain it through a defect of jurisdiction, such selection of the Court is as much attributable to his own negligence, as, say, a misjoinder of parties. In India it is often a very nice question, which Court has jurisdiction: and a plaintiff may make a *bonâ fide* mistake in his selection of a Court: and it is to meet that class of case that section 14 was enacted. But these considerations cannot apply to the case of a misjoinder of parties or causes of action, when the law and the practice are so well established.

For these reasons I consider this suit is barred by limitation. The decree of the Court of first instance must be discharged and the suit dismissed with costs, both here and in the Court of first instance.

This judgment admittedly covers appeals 50, 51, 52, and 53, and a similar decree will be passed in each of these cases.

HARINGTON J. I agree.

FLETCHER J. I also agree.

Appeal allowed.

Attorneys for the appellants: *G. C. Chunder & Co.*
Attorneys for the respondents: *Ghosh & Ker.*

R. G. M.