[ORIGINAL CIVIL JURISDICTION.]

In Chambers.

1873

July 3.

KESHAVJI NA'IK AND ANOTHER

v.

NASARVA'NJI ARDESIR WADIA.

Written Statements—Civil Procedure Code, Sec. 124.

Relevancy—Tendering—Jurisdiction.

The Court has jurisdiction to take a written statement off the file, for irrelevancy, until it is "tendered," which is when it is produced at the hearing of the suit.

"Relevancy" is to be judged by what the defendant believed to be material to his case, and not whether it did in fact disclose a good defence to the action.

THIS was an application under Sec. 124* of Act VIII. of 1859. The plaint was in trover for the recovery of some documents, which the written statement admitted were in the possession of the defendant, and which the defendant was willing to give up if the Court thought it was proper that he should do so; the rest of the matter contained in the written statement, stated generally, was to the effect that the defendant wanted to use the documents to cross-examine the present plaintiff in another suit in which he was assignee, and had an interest pending in this Court against him, and in which they had been put in.

A summons was taken out before SARGENT J. by the plaintiffs, calling upon the defendant to show cause, why the written

"*Sec. 124. If it shall appear to the Court that any written statement presented by or on behalf of a party, whether the same have been spontaneously tendered or have been called for by the Court, is argumentative or unnecessarily prolix, or that it contains matter irrelevant to the suit, the Court may reject the same, and return it to the party with the order of rejection endorsed thereon; and it shall not be competent to a party, whose written statement has been rejected for any of these causes, to present another written statement, unless it shall be expressly called for or allowed by the Court."

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statement, which had been filed in answer to the plaint, should not be rejected and taken off the file, and returned to the defendant, on the ground that it contained matter irrelevant to the suit, or why at least the first and second paragraphs thereof should not be expunged.

The summons was dated the 27th of June 1873, and on the day previous a notice had been addressed by the plaintiff's attorneys to the defendant's attorneys, which notice set forth that the written statement, in question, contained a great deal of matter which was not only irrelevant, but was scandalous and most improper, and called upon the defendant's attorneys, either to consent to a Judge's order for it to be taken off the file, or that, at least, the matter complained of should be expunged therefrom. The defendant's attorneys replied on the same day, declining to consent to the above request.

Anstey, in showing cause against the summons, contended that the Court had no jurisdiction in the matter, and that, if it had, this was not a case in which it would exercise it. As to the first point, he contended that the Court loses the opportunity contemplated by the Code of rejecting written statements if it did not see the document when it was tendered, and according to the practice of this Court, the written statements are not shown to the Judge before they are filed with the Prothonotary. And, on the second point, he submitted that the written statement of his client did not contain matter which was irrelevant to the suit, and that the Court had no power under the Code to consider whether or not any matter in the written statement was scandalous, and could not expunge any such matter; he cited *Smallwood* v. *Parry* (*a*), and *Abbott* v. *Abbott* (*b*).

Honourable A. R. Scoble, Advocate General, in supporting the summons, contended that the Court had undoubtedly power to reject a written statement which contained irrelevant matter, and that under the powers inherent in it as a

(*a*) 1 Coryton 39. (*b*) 4 Beng. L. Rep. O. C. J. 51.

Court of Record, the Court had undoubtedly the power to order any document or proceeding to be taken off the file, and removed from the record of the Court, which contained scandalous or improper matter: he cited *Ex parte Simpson* (*c*). He also argued that this being really a Common Law Action in trover the defendant's written statement set forth no grounds of defence to the suit, because it admitted the possession of the documents, which was the only thing sought to be recovered in the suit; and practically that they were the property of the plaintiffs, and that he was willing to deliver them up, if the Court thought it was proper that he should do so. As to the rest of the matter contained in the written statement, such matter was entirely irrelevant to the questions at issue in this suit, there was no doubt upon reading the written statement that it contained matter which was most scandalous; for it alleged matters against the plaintiffs which, if true, would subject them to criminal charges.

SARGENT, J.:—This is mainly a question of jurisdiction. The difficulty arises as to the practice of the Court, as to the reception of written statements not being, *simpliciter*, the practice contemplated by the Code. In construing the Code, endeavour must be made to put such a construction on the practice as not to render null and void the provisions of the Code. The filing of a written statement does not necessarily make it a part of the record, but it is merely for the purpose of notice to the plaintiff of the nature of the defence. The production of the written statement at the trial is the "tendering" contemplated by the Code, and if not then objected to, the written statement becomes part of the record. I will not decide that this objection was taken too early; and it might be that if it was taken at the hearing it might be argued, on the authority of *Smallwood* v. *Parry*, cited by Mr. Anstey, that it was taken too late. There is no practice on the subject. What was done then was in analogy to Chancery practice. I am, therefore, of opinion that the Court has jurisdiction. Then, as to the

(*c*) 15 Vesy. 476.

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relevancy of the written statement, the question is not whether it discloses a good defence to the action, but whether the facts stated therein are such as the defendant believed to be material to his case. The defendant admits that the documents are the property of the plaintiffs, and urged that they were intended to be used, and had been put in, in a suit in which he was assignee and had an interest. He might have got himself made a party to that suit, but he did not do so. If his narrative had been confined to this circumstance, it would have been relevant; I will not say, a good defence, but relevant and material to the case. It appears to me that, though great latitude must be allowed in construing the word "relevant" it would be going too far to say that some of the statements or allegations contained in the written statement under review had any bearing on the suit. The plaintiffs have objected to the first and second paragraphs of the written statement, but I think the first paragraph might be considered relevant. I shall reject therefore the written statement, and order it to be returned to the defendant; and upon the question of costs, as the plaintiffs had given notice of their objection to the written statement, and the defendant had refused to comply with the terms of their request, the defendant must pay the costs of, and incidental to, the application with counsel's fees certified.