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defendants have succeeded in their defence of justification; and having regard to this, and to the nature of the allegations of the plaint to which I have referred, I am of opinion that the plaintiff ought to bear the costs of this suit. The issues, therefore, will be found as above mentioned, and the decree is that this suit be dismissed with costs to be borne by the plaintiff, including the defendants' costs of showing cause against the rule *nisi* for injunction and the notice of motion of 16th March 1876.

[ORIGINAL CIVIL JURISDICTION.]

Suit No. 211 *of* 1876.

December 4.

HA'JI JAKARIA (PLAINTIFF) *v.* HA'JI CASIM (DEFENDANT).

Partnership—Production of documents—Inspection.

One partner of a firm represents the other partners for the purposes of production of documents.

Therefore, where the plaintiff, alleging that he had been a partner with the defendant and others, in the firm of Ibrahim Kadu and Co., and that on the dissolution of that firm, the amount then standing to his credit in the partnership books had been carried to his credit in the books of a new firm, in which he and the defendant only were partners, applied for an order on the defendant to produce, for the plaintiff's inspection, the books of Ibrahim Kadu and Co., which application was resisted by the defendant, on the ground that the other partners in the firm of Ibrahim Kadu and Co. had an interest in those books, and were not parties to the present application, or shown to have consented to it.

Held that the plaintiff was entitled to the order.

THE plaint alleged that, prior to the year 1862, the plaintiff had been a partner with the defendant and certain other persons, named in the plaint, in the firm of Ibrahim Kadu and Co.; that in 1862 this firm was dissolved, and the amount then standing to the credit of the plaintiff in the partnership books had been carried to his credit in a new firm, Haji Abdul Sakur Haji Kadu, in which he and the defendant only were partners; and prayed for an account, dissolution, and payment of the amount due to the plaintiff. The books of the firm of Ibrahim Kadu and Co. had been lodged in the office of the Master in Equity, under an order obtained against that firm in a former suit, by another plaintiff. The plaintiff in the present suit, with a view to establishing the truth of his allegation as to his interest in the firm of Ibrahim Kadu and Co., obtained a summons in Chambers, calling on the defendant to show cause why he should not, on the usual affidavit,

produce and lodge in Court, or in the office of his solicitors, all the account books, documents, papers, writings, releases, deeds, memoranda, and partnership agreements of the firm of Ibrahim Kadu and Co., and allow the plaintiff inspection thereof with liberty to take copies of them.

The summons was argued before SARGENT, J.

Farran, for the defendant, in showing cause contended that the partners other than the defendant in the firm of Ibrahim Kadu and Co. had an equal interest with him in the books of that firm, and inasmuch as they were not parties to the present suit, nor were shown to have consented to the production of those books, the order for production could not be granted.

Starling for the plaintiff in support of the summons.

SARGENT, J. :—The question is whether production is to be ordered of certain documents, and especially of the partnership books belonging to the firm of Ibrahim Kadu and Co., for the purpose of being inspected by the plaintiff. The plaintiff alleges that he was a partner in that firm, and that a sum of money was caused to be carried to his separate account in the books of that firm. The objection to their production is that the defendant is not the only person interested in the books in question, but that the other partners in the firm of Ibrahim Kadu and Co., who are not parties to this suit, and who are not shown to consent to the production of the books, are also interested in them. The books are at present in the possession of the Master in Equity, an officer of this Court, and the question is,—Will the Court order their production ? Now there appears to be no settled practice in cases of this nature—it is advisable, therefore, to consider the English authorities.

The rule of the Court of Chancery in England is thus laid down by Lord Cottenham in *Taylor* v. *Rundell*[1] : " If a defendant has a joint possession of a document with somebody else, who is not before the Court, the Court will not order him to produce it, and that for two reasons : one is, that a party will not be ordered to do that which he cannot or may not be able to do ; the other is, that another party, not present, has an interest in the document which the Court cannot deal with." In *Murray* v. *Walter* and

(1) Cr. and Phil. 104, see p. 111 ; S. C. 1 Y. and C. Ch. 128 ; 5 Jur. 1129.
(2) Cr. and Phil. 114 ; S. C. 3 Jur. 719.

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Reid v. *Langlois*[1], Lord Cottenham refused to order production by a partner or his agent, all the other partners not being before the Court, adding that the rule was well established, and could not be considered as open to dispute. Other judges, however, have struggled to escape from applying the rule in all its strictness. Lord Langdale in *Lopez* v. *Deacon*[2], whilst feeling himself bound by it, expressed his disapprobation of it. He says: "Lord Cottenham states distinctly that you cannot order the production of papers on the admission of one person, if other persons are interested in them. I cannot, therefore, in the face of those decisions make an order for the production of these papers. The effect will be merely to increase the expense of the suit; for, in one of two ways, the contents of these papers may certainly be had. The plaintiff may either make all the persons interested, parties to the suit, or he may press the defendant for a full discovery of the contents of these documents by his answer. I think that, if the power of the Court is to be really restricted in the way that is alleged, the only effect will be to increase the expense of obtaining the discovery which the plaintiff is entitled to." Lord Truro in *Glyn* v. *Caulfeild*[3] said: "As regards the case before me, it is one of that class in which it is considered that convenience, if not necessity, requires that some of the shareholders in a company should represent the rest for the purposes of litigation. In *Taylor* v. *Rundell*[4], Lord Cottenham observes: 'If a defendant has a joint possession of a document with somebody else, who is not before the Court, the Court will not order him to produce it, and this for two reasons: the one is, that a party will not be ordered to do that which he cannot or may not be able to do; the other is, that another party, not present, has an interest in the document which the Court cannot deal with.' The present case does not fall within either of these reasons; the defendants, physically speaking, can produce the documents, and, legally speaking, they ought to produce them, because there is no other person having an interest distinct from their own interest,—that is the common partnership interest,—to form a ground why, according to the second of the above reasons,

(1) 1 Mac. and G. 627, see p. 636; S. C. 2 H. and Tw. 59; 19 L. J. (N. S.) Ch. 337; 14 Jur. 467.

(2) 6 Beav. 254, see p. 258.

(3) 3 Mac. and G. 463, see p. 472; S. C. 15 Jur. 807.

(4) Cr. and Phil. 104; 1 Y. C. Ch. 128; 5 Jur. 1129.

the defendants should not be ordered to produce the documents. It appears to me, therefore, that neither of these decisions of Lord Cottenham militates against the production of the documents; and that the present case is not within the principles, as stated by Lord Cottenham, upon which protection has been given; and I may add that, in *Lopez* v. *Deacon*(1), Lord Langdale intimated his disapprobation of exempting from production in such cases." Notwithstanding the doubts thus expressed by Lord Langdale and Lord Truro, we find the Lords Justices treating the rule as too well established to be departed from, in *Hadley* v. *Macdougall*(2).

As to the Courts of Law, it is stated in Lush's Practice of the Supreme Courts of Law, as the old practice, that if the documents are in the custody of the party, inspection will be ordered, though other persons not parties to the action have also an interest in them: the question being simply whether the Court is satisfied that the document is in his control. *Shaw* v. *Holmes*(3) *Steadman* v. *Arden* (4).

Since the Statue 14 and 15 Vic., C. 99, and the Common Law Procedure Act, it would appear that the power to grant inspection is only limited by what the Court may think just, *Hill* v. *Campbell* (5), where the question is very fully discussed. *Plant* v. *Kendrick* (6) shews what little regard the Court pays to the mere fact of other parties being interested in the books. Such being the state of the English authorities, it appears to me that it would be highly inconvenient to follow the strict rule of the Court of Chancery more especially having regard to the circumstance that it is not the practice here, even if we have the power, to add parties to the record who are not interested in the suit. At the same time I think that, although unfettered by any strict rule forbidding production in such cases, the Court should be governed by all the circumstances of each case in determining whether the order for production would, in the language of the Common Law Procedure Act, "be just." In the present case I think that the other members of the partnership are sufficiently represented by the defendant Háji Casim, and that the books should be produced in the Master's office on notice to the defendant.

(1) 6 Beav. 254. (2) L. R. 7 Ch. Ap. 312 (3) 3 C. B. 952.
(4) 15 M. and W. 587; S. C. 4 D. and L. 16; 10 Jur. 553; 15 L. J. Exch. 310.
(5) L. R. 10 C. P. 222; 23 W. R. 336; 44 L. J. C. P. 97; 32 L. T. N. S. 59.
(6) L. R. 10 C. P. 692.