

ORIGINAL CIVIL.

Before Mr. Justice West.

EDULJI MUNCHERJI WACHA, PLAINTIFF, v. VULLEBHOY KHANBHOY
AND OTHERS, DEFENDANTS.*

1883
March 1.

Practice—Transposition of parties—Making a defendant plaintiff and making the plaintiff a defendant—Partnership suit—Civil Procedure Code (X of 1877), Sec. 32.

The plaintiff in a partnership suit to which there were twenty-one defendants applied to the Court for leave to withdraw the suit, or that the suit might be dismissed. Ten of the defendants supported the plaintiff's application. Two of the defendants objected, and applied, under section 32 of the Civil Procedure Code (X of 1877), that they might be made plaintiffs and that the plaintiff might be made a defendant. The Court granted their application.

PARTNERSHIP suit for account; &c. The defendants were twenty-one in number. Some of them had filed written statements.

Pursuant to notice given to the defendants, dated 17th February, 1883, the plaintiff in person now applied for leave to withdraw the suit, or that the suit might be dismissed.

Lang, for defendants Nos. 10 and 19, objected, and applied under section 32 of the Civil Procedure Code (X of 1877) that his clients might be made plaintiffs and that the plaintiff might be made defendant in the suit. The plaintiff has settled with most of the defendants, but not with my clients, and they are desirous of prosecuting the suit and having the accounts taken. If a plaintiff in a partnership suit is to be allowed to withdraw, the defendants in such a suit will never be safe unless they file separate suits; for the plaintiff may delay his withdrawal until the period of limitation has expired, and then they will be without a remedy. If the plaintiff can withdraw, now there is no reason why he should not withdraw after the accounts are taken and a balance found due against him. This suit has been on the file since 1881. Written statements have been filed and affidavits of documents have been made. If the plaintiff's application succeeds, the parties will have incurred great expense to no purpose. A partnership suit is in some respects like a creditor's suit for administration, and the Court constantly trans-

* Suit No. 209 of 1881.

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fers the carriage of such a suit from one creditor to another. In suit No. 623 of 1878 (unreported), Bayley, J., made an order on 29th August, 1879, similar to that for which I now apply.

Jardine for ten of the defendants.—We consent to the plaintiff's application, and object to Mr. Lang's application. There is nothing to distinguish a partnership suit from any other suit. The defendants may bring a suit if they please. As to the possibility of such a suit being barred, limitation will run equally in case a defendant is made a plaintiff. The order made in Suit No. 623 of 1878 is not in point, for there the plaintiff was not made a defendant. Here he must be a defendant, inasmuch as he was a member of the partnership. Moreover, the plaint makes allegations of fraud in which the defendants do not join. The plaintiff is, of course, willing to submit to any terms as to costs, imposed by the Court.

The other defendants did not appear.

WEST, J.—I should like to have some authority to guide me in deciding this question, and it is strange, considering the multitude of partnership cases in the English reports, that no case upon the point appears to be forthcoming. The present application is made under section 32 of the Civil Procedure Code, which provides that parties may be added or transposed as may be necessary "to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit." These questions, of course, in an ordinary suit arise on the allegations made by the plaintiff, and *primâ facie* it would appear that if the plaintiff withdraws, the allegations are withdrawn, and no question remains for the Court to decide. But a partnership suit is a suit of a peculiar character, and the parties to such a suit do not stand to each other precisely in the same relation as parties to suits generally. Each of the parties to a partnership suit, however he may be formally ranked, is really in turn plaintiff and defendant, and in both capacities comes before the Court for the adjudication of his rights relatively to the other partners, which the Court endeavours to determine by its decree. In a case mentioned to me it seems that a double transposition of parties was made in taking the account after a decree, and this being possible it seems equally reasonable that the proceedings in the suit may

be moulded to attain the same end. I think, therefore, that the Court may transpose the parties in such suits where it is shown to be necessary or desirable, in order that their pecuniary relations of debtor and creditor may be ascertained. A case cited shows that a defendant in such a suit has been made a plaintiff in place of the original plaintiff; and the only question is whether there is any difference of principle involved in not only making a defendant plaintiff, but at the same time making a plaintiff a defendant. I do not think there is. the defendant made plaintiff might apply to have the plaint amended so as to make the late plaintiff a defendant. If the partnership account prayed for in the suit is to be complete, all the parties to the partnership have a right, and are under an obligation to appear. If the plaintiff is not made a party defendant, it might happen that the whole object of the suit would be defeated, and needless expense thrown upon persons who have inflicted no injury upon the partnership. All the proceedings already taken might prove futile, and it might be necessary to begin the whole case over again. Here, no doubt, allegations of fraud have been made by the plaintiff in which the defendants do not join. It is generally true that a plaintiff who puts forward fraud as a ground of relief must prove it, and will not be allowed, if he fails, to claim relief upon some other ground. But I do not see that that rule has any application to such a case as this. The applicants here are not answerable for the allegations of fraud made against their co-defendants by the plaintiff, and they may obtain relief from this Court upon grounds differing in detail from those put forward by the plaintiff, though involving the same general principle for claim to the Court's assistance in ascertaining the pecuniary relations of the several partners in the firm. I think that this application should be allowed; and I reserve the disposal of costs, as complicated questions upon the point may arise. Leave is also given to amend the plaint as advised.

Application granted.

Attorney for the defendants Nos. 10 and 19.—Mr. *Pestorji Kavasji*.

Attorneys for the other defendants.—Messrs. *Payne and Gilbert*.

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