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[178] ORIGINAL CIVIL.

Before Mr. Justice Scott.

GEFFERT (*Plaintiff*) v. RUCKCHAND MOHLA (*Defendant*)*.

[24th September, 1888.]

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Practice—Procedure—Venue—Right of plaintiff to choose place of trial—Civil Procedure Code (Act XIV of 1882), ss. 20 and 53.

The plaintiff brought this suit in the High Court at Bombay against the defendant for defamation alleged to be contained in a notice that appeared in the *Bombay Gazette* on the 9th April, 1888. The defendant was the chairman of the Hinganghat Mill Company. The plaintiff had been for some years secretary and manager of that company. In April, 1888, he was dismissed from his appointment, and shortly afterwards he filed a suit (No. 1 of 1888) in the Court of the Deputy Commissioner at Wardha, in the Central Provinces, (which was the Court of the district in which Hinganghat is situated), for wrongful dismissal. The present suit was filed in July, 1888. The defendant took out a summons calling on the plaintiff, to show cause why the suit should not be stayed and the plaint returned to the plaintiff, in order that, if he thought proper, it might be presented to the Court at Wardha. The defendant relied on the following points:—(1) that neither he nor the plaintiff resided or carried on business at Bombay; (2) that all the defendant's witnesses resided at Wardha; (3) that the other suit (No. 1 of 1888) was pending at Wardha, and that the decree of that suit would decide the present case also.

Held, that the plaintiff was entitled to sue in Bombay.

[F., 3 Bur. L. T. 60=8 Ind. Cas. 449 (450); 7 L. B. R. 129=23 Ind. Cas. 345.]

In chambers. Summons calling upon the plaintiff to show cause why the plaint in this suit should not be returned to him under s. 53 of the Civil Procedure Code (Act XIV of 1882), and why the proceedings in the suit should not be stayed under s. 20 of the Code.

The suit was for defamation. The defendant was the chairman of the Hinganghat Mill Company. The plaintiff had been for seven years secretary and manager of that company. In the month of April, 1888, he was dismissed from his appointment, and shortly afterwards he filed a suit, (No. 1 of 1888), in the Court of the Deputy Commissioner at Wardha, in the Central Provinces, (which was the Court of the district in which Hinganghat is situated), for wrongful dismissal.

On the 9th April, 1888, a notice appeared in the *Bombay Gazette* purporting to be signed by the defendant as chairman of the Directors of the Hinganghat Mill Company, stating that [179] the plaintiff had been dismissed from the office of secretary and agent of that company; and on the same day and close to the said notice and in the same column of the newspaper was an advertisement, which the plaintiff alleged was published by the order of the defendant, calling a meeting of shareholders of the company, such meeting being rendered necessary in consequence of alleged irregular and improper entries in the minute book. The plaintiff as secretary and agent was the person who was in charge of the minute book, and who was responsible for the entries in it.

In July, 1888, he filed this suit against the defendant, alleging that "by the said two advertisements taken together the defendant meant to accuse the plaintiff of having misconducted himself as such secretary and manager by wrongfully and fraudulently entering in the minute book

* Suit No. 294 of 1888.

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of the said company incorrect minutes of a meeting of the said company which had been held on the 27th day of March, 1888, and many of those who read the said two advertisements understood therefrom that such a charge was thereby made against the plaintiff."

He claimed Rs. 1,00,000 as damages for the alleged defamation.

The defendant took out the present summons calling on the plaintiff to show cause why the suit should not be stayed and the plaint returned to the plaintiff in order that, if he thought proper, it might be presented to the Court at Wardha. In the affidavits filed in support of the summons the following were the main points relied on:—(1) that neither the plaintiff nor the defendant resided or carried on business in Bombay; (2) that all the witnesses, whom the defendant would be obliged to call in order to prove justification, resided at Wardha, and it would, therefore, be necessary to issue a commission for their examination; (3) that the other suit (No. 1 of 1888) filed by the plaintiff against the company was pending at Wardha; and that the decision of that suit would necessarily decide the present case also.

On the other hand, the plaintiff contended that the libel complained of having been published in Bombay, the greater part of [180] the damage, so far as he could at present ascertain, had been sustained by him in Bombay, and in order to prove this damage he would be obliged to call persons residing in Bombay; that if the case were transferred to Wardha, a commission would have to be issued to Bombay for the examination of these witnesses; that having been defamed in Bombay he was desirous of vindicating his character in Bombay; that he himself was not permanently resident outside Bombay; that he was residing elsewhere at present merely in consequence of having brought the suit at Wardha; and that as soon as that suit was terminated he intended to come to Bombay and reside there.

Starling, for the plaintiff, showed cause.—The libel was published in Bombay, and the cause of action, therefore, arose in Bombay. The damage to the plaintiff is in Bombay. The witnesses to be called by the plaintiff are in Bombay. The plaintiff has the right to choose his *forum*. He desires the publicity of trial in Bombay, in order effectually to vindicate his character in the place where it has been defamed. We say justice is more likely to be done by a trial in Bombay. That is the important point: see s. 20 of the Civil Procedure Code (Act XIV of 1882).

Inverarity, for the defendant, *contra*.—The suit already instituted and pending at Wardha includes the question raised in this suit. Neither plaintiff nor defendant resides in Bombay. All the documents and the material evidence are at Wardha.

JUDGMENT.

SCOTT, J.—In this case the plaintiff sues the defendant for defamation. He charges the defendant, who is the chairman of the Hinganghat Company, with having defamed him in Bombay by publishing in the *Bombay Gazette* a notice of his dismissal from the office of secretary and agent to the Hinganghat Company, together with notice that certain entries in the minute book of the company, for which he was responsible, are fraudulent. The defence to the present suit is that, as a fact, the plaintiff was rightfully dismissed from his office, and that the publication of the two notices complained of was necessary in the interests of the company.

[181] It appears that, some time before the present suit was filed, the plaintiff had filed a suit against the Hinganghat Company claiming damages for wrongful dismissal. This earlier suit was filed in the Court of the Deputy Commissioner at Wardha, in the Central Provinces, the Court of the District in which Hinganghat is situated, and that suit is now pending in that Court. The defence of the company in that suit is that the dismissal of the plaintiff was justified by his misconduct.

The defendant has taken out the present summons under s. 20 of the Civil Procedure Code (Act XIV of 1882). He contends that the plaintiff should not be permitted to bring the present suit in Bombay; that it can be more conveniently tried at Wardha, and that, in fact, the question raised in this suit between him and the defendant will be practically decided by the decision of the earlier suit which is now pending at Wardha. He says that both he and the plaintiff are at present residing at or near Wardha, and that a material part of the evidence can only be procured there. On the other hand, the plaintiff claims that he has a right to institute this suit in Bombay; that the cause of action has arisen here; that the injury of which he complains has been inflicted on him here, and that the evidence on which he relies to prove the damage which he has sustained can only be procured in Bombay.

Now under s. 17 of the Civil Procedure Code (Act XIV of 1882) the plaintiff unquestionably has the right of bringing his suit in the Court within which the cause of action has arisen, and it is clear, therefore, that inasmuch as the libel, of which the plaintiff complains, has been published in Bombay he has *prima facie* the right to file his suit in this Court. He might, no doubt, have filed it at Wardha, where the defendant carries on business. That alternative choice of *forum* is given to a plaintiff by s. 17. The defendant contends that he ought to have filed it at Wardha, and by the present summons the defendant asks the Court to make an order the effect of which will be to compel the plaintiff to sue at Wardha if he persists in suing at all.

What is the consideration by which the Court is to be guided in deciding such a question as is raised by the parties in this [182] case? We find it laid down in the second clause of s. 20, that the Court may make such an order as is now asked for if it "is satisfied that justice is more likely to be done by the suit being instituted in some other Court." The sole question, therefore, is whether, under the circumstances, justice is more likely to be done between the parties by refusing to allow the plaintiff to continue his suit in this Court.

There are no reported precedents in the Indian Courts. The English cases show that the Courts are exceedingly reluctant to make such an order as the defendant applies for. In *McHenry v. Lewis* (1), Cotton, L. J., says: "It is a jurisdiction which one ought to exercise with extreme caution. Stopping in the middle of a suit a plaintiff from going on when he has a right of action as against the defendant, is a jurisdiction which has to be exercised with very considerable caution." In the *Peruvian Guano Company v. Bockwoldt* (2), Jessel, M. R., says: "It is very important in these cases that the Court should clearly see that in stopping an action it does not do injustice. Of course a man brings an action at the peril of costs if the action does not succeed, and as a general rule that is sufficient to protect defendants from ill-founded actions. There is another protection, which is that where the action is vexatious it may be stayed.

(1) L. R. 22 Ch. Div. 406.

(2) L. R. 23 Ch. Div. 225 (229, 230).

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Now it may be vexatious on many grounds. It may be so utterly absurd that the Judge sees it cannot possibly succeed, and that it is brought only for annoyance, and then the Judge has jurisdiction to stay the action. That is pure vexation. Or it may be vexatious in another way; that is, the plaintiff not intending to annoy or harass the defendant, but thinking he would get some fanciful advantage, sues him in two Courts at the same time under the same jurisdiction—two of the Queen's Courts. That is vexatious, because whatever the intention of the plaintiff may be, he cannot get any benefit in that way, and the defendant is harassed by two suits."

Now in this case there is no question of vexing the same defendant with double litigation. In the two suits brought by the plaintiff the defendants are different, the causes of action are [183] different, the questions raised between the parties are different. It would, no doubt, be much more convenient to the defendant to have the case against him tried at Wardha. Nearly all his evidence and probably a large portion of the plaintiff's evidence is only obtainable there. But is that a ground for depriving the plaintiff of his right to bring his suit in this Court? The injury and damage of which he complains have been inflicted in Bombay, and many of his witnesses (he says) are resident here. He desires to vindicate his character in the place where he alleges it has been defamed. I can find no authority for preventing him doing so. I am not satisfied (to use the words of the section) that justice is more likely to be done at Wardha or elsewhere than in this Court, and I must, therefore, discharge this summons.

Summons discharged.

Attorneys for the plaintiff:—Messrs. *Payne, Gilbert, and Sayani.*

Attorneys for the defendant:—Messrs. *Jefferson, Bhaishanker and Dinsha.*

NOTE.—See also *Levy v. Rice*, L. R. 5 C. P. 119; and *Church v. Barnett*, L. R. 6 C. P. 116.

13 B. 183.

ORIGINAL CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Bayley.

JAMSETJI BURJORJI BAHADURJI (*Plaintiff*) v. EBRAHIM
VYDINA AND ARDESIR BURJORJI BAHADURJI (*Defendants*).*

[5th and 13th October and 10th December, 1888.]

Vendor and purchaser—Sale set aside—Decree in favour of vendor—Possession—Purchaser in possession after decree and pending appeal—Accident—Loss by fire—Liability for damage.

The plaintiff and the second defendant Ardesir were brothers, and worked a cotton press in partnership. In August, 1884, the second defendant sold the press for Rs. 35,000 to Yydina, (the first defendant), who paid the second defendant Rs. 5,000 earnest, and was put into possession. The plaintiff then brought a suit (No. 327 of 1884) against his brother, (the second defendant), praying for a dissolution of the partnership. Yydina was also a party defendant to that suit. The plaintiff alleged that Rs. 35,000 was much too low a price for the press, and he objected to the sale. He prayed that Yydina might be restrained from continuing in possession of the press and working it, and that a receiver might be appointed to take possession of it until further order. On the 21st April, 1885, on a

* Suit No. 94 of 1887.