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cases referred to in the foot note, establish that in this country it is in all cases open to third parties to show that such was the case.

Here the beneficial property in the contract had not passed to Khorsi Khetsi; and although the defendant would be probably bound to recognize an assignee who could establish his title of full ownership in the contract, no authority was cited to show that he was under an obligation to do so, if, as a fact, the property in the contract still remained in the person with whom the defendant had originally contracted. Further, as Khorsi Khetsi asked for delivery as beneficial owner, and not on behalf of the plaintiff, there has been, in fact, no demand for delivery by the [7] plaintiff or on his account, as required by s. 93 of the Contract Act IX of 1872, which the defendant was bound to recognize.

We must, therefore, answer the eighth question in the negative. The first question must be answered in the affirmative, the term fraudulent being understood as above explained. The second and third questions, on a similar understanding, in the negative. The fourth, fifth and sixth questions require no answer, as the fourth and sixth raise a question of fact; and as to the fifth, the *onus* was not, as far as appears from the case, thrown on the plaintiff. The ninth must be aswered in the negative. The seventh and tenth require no answer.

Costs of reference on the plaintiff.

Attorneys for the plaintiff: Messrs. *Conroy and Brown.*

Attorneys for the defendant: Messrs. *Chalk, Walker and Smetham.*

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Before Mr. Justice Farran.

W. D. RYRIE AND OTHERS (*Plaintiffs*) *v.* SHIVSHANKAR GOPALJI (*Defendant*).* [2nd August, 1890.]

Practice—Discovery—Affidavit of documents when there are several plaintiffs some of whom are in England—Inspection—Privilege—Grounds of privilege.

Where there are several plaintiffs, all of them must join in making the affidavit of documents, unless some specific reasons to the contrary are shown. The fact that some of the plaintiffs reside in England, is no reason why they should be excused from making such affidavit.

Documents which contain the purport of interviews with, and of advice received from the plaintiffs' solicitors and counsel as to the plaintiffs' position in regard to their said claim and as to the steps to be taken thereto, are privileged.

Documents which record the steps taken by the plaintiffs from time to time in prosecuting their claim against the defendant, are not privileged.

Opinions upon, or steps taken in reference to a suit in which plaintiffs and defendant are putting forward opposing contentions, cannot be said to relate solely to the case of the plaintiff, and are not privileged.

SUMMONS in Chambers. The concise statement stated the plaintiffs' claim to be " for Rs. 57,397-10 and such further sum [8] with interest as might be the deficiency upon the consignment '*Ex Hispania*' and the

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costs of this suit, and for a declaration of lien upon the immoveable property specified in the plaint and for the sale thereof."

The defendant denied that he was indebted to the plaintiffs in the above amount, and claimed that the accounts between them should be taken.

On the 23rd June, 1890, William Greaves, one of the plaintiffs, made an affidavit of documents, and in schedules annexed to the affidavit he set forth all the documents in his possession. He objected to produce the documents mentioned in the second part of the second schedule, and in his affidavit he stated the grounds of his objection as follows :—

" The plaintiffs object to produce the documents set out in the second part of the second schedule, on the ground that they are private letters written by one of the plaintiffs in Bombay to one of the plaintiffs in England, and *vice versa*, after this litigation had become imminent and after legal advice had been taken as to the course of such litigation ; that such documents contain the purport of interviews with, and of advice received from, the plaintiffs' solicitors and counsel as to the plaintiffs' position in regard to their said claim and as to the steps to be taken in regard thereto, and record the steps being taken by the plaintiffs from time to time to prosecute their said claim against the defendant ; that, moreover, the said documents relate solely to the case of the plaintiffs, and not to the case of the defendants, and they do not, to the best of my knowledge, information and belief, contain anything impeaching the case of the plaintiffs."

On the 12th July, 1890, the defendant took out a summons calling on the plaintiffs to show cause " why the plaintiffs other than the plaintiff William Greaves should not be ordered to disclose by affidavit all the documents in their possession or power relating to the subject-matter of the suit in Bombay, and especially at their head office in London, and why they should not grant full and free inspection to the defendant or his attorneys of the documents specified in the second part of the second [9] schedule to the affidavit of the said William Greaves, sworn herein on the 23rd June last, &c., &c."

The summons now came on for argument.

Inverarity, for the plaintiffs, showed cause. He cited *Bewicke* v. *Graham* (1).

Brown, for the defendant, *contra*. He cited *Attorney-General* v. *Emerson* (2) ; *Anderson* v. *Bank of British Columbia* (3) ; *Mirza Ally Bebanee* v. *Syed Hyder Hossein* (4) ; *Bipro Doss Dey* v. *Secretary of State for India in Council* (5).

JUDGMENT.

FARRAN, J. —The defendant in this case has taken out a summons calling on the plaintiffs to show cause why the plaintiffs other than W. Greaves should not make an affidavit of documents. W. Greaves has already done so. Two of the plaintiffs, namely, W. D. Ryrie and W. M. Macaulay reside in London, and the fourth plaintiff, J. M. Ryrie, is described as residing in Bombay. On referring to the authorities I find that when there are several plaintiffs, all of them must join in the affidavit, unless some specific reasons are shown to the contrary—*Wilson* v. *Raffalovich* (6) ;

(1) L.R. 7 Q.B.D. 400. (2) L.R. 10 Q.B.D. 191. (3) L.R. 2 Ch. D. 644.
(4) 2 B. 449. (5) 11 C. 655. (6) L.R. 7 Q.B.D. 553.

Peile on Discovery, p. 112. The special reason to the contrary urged here is that the plaintiffs, for whom discovery is sought, are residing in England, and that the affidavit already made discloses all material documents in the possession of the plaintiffs. This may be so; but the defendant is entitled to have the oath of the absent plaintiffs to show it, and it is quite possible that the plaintiff in Bombay who has made an affidavit may be mistaken. The possible existence of some documents in London relevant to the case has been suggested by Mr. Brown. If the order directing the plaintiff to make an affidavit of documents, which was an *ex-parte* order, was made improvidently, the plaintiff might have applied to set it aside and have its effect limited to the plaintiff in Bombay. It possibly, upon a proper case being made out, might have been so limited. I give no opinion as to that. But the order being in its present form, the plaintiff must obey it. I must make the summons absolute on this head.

[10] The summons also asked for inspection of documents specified in the second part of the second schedule to the affidavit of the plaintiff, W. Greaves. The plaintiffs contend that they are privileged. They consist of letters which have passed between the plaintiff in Bombay and the plaintiffs in London, and *vice versa*. The privilege is thus claimed. (His Lordship read the paragraph of the affidavit above set forth, and continued.) The first portion of the clause relates only to their being private letters written after litigation had become imminent and after legal advice had been taken as to its course. This is not one of the usual grounds of privilege—*Wallace* v. *Jefferson* (1); *Bipro Doss Dey* v. *Secretary of State for India in Council* (2).

The second ground of the claim is this: "Such documents contain the purport of interviews with, and of advice received from, the plaintiffs' solicitors and counsel as to the plaintiffs' position in regard to their said claim and as to the steps to be taken in regard thereto." As the plaintiffs could not be called upon to state in Court what passed at interviews between themselves and their solicitors, or the advice which they have received from the latter (Indian Evidence Act I of 1872, s. 129), it follows, I think, that they cannot indirectly be compelled to disclose what they could not be directly called upon to state. If communications prepared to be laid before solicitors for the purpose of taking their advice are privileged—*The Southwark and Vauxhall Water Company* v. *Quick* (3)—it follows that *a fortiori* the advice given with reference to such communications must also be privileged, and it is immaterial that such communications pass from agent to principal, or *vice versa*, before or after they are communicated to the solicitors. The same rule must apply to the advice of the solicitor.

It is not, however, clear, upon the affidavits, whether all the documents for which privilege is sought, fall within this last category, and whether some of them do not belong to the former only, and whether some do not fall under the subsequent category, namely, that of recording the steps taken by the plaintiffs, from time to time, to prosecute their claim against the defendant. **[11]** This is not a ground of exemption on the score of privilege. The affidavit should discriminate between the contents of the different letters: see *The Oriental Bank Corporation* v. *T. F. Brown and Co., Limited* (4).

The last portion of the clause which I have read, clearly however refers to all these documents. Apart from the question of privilege, it

(1) 2 B. 453.
(2) 11 C. 655.
(3) L.R. 3 Q.B.D. 315 (322).
(4) 12 C. 265.

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seems to be impossible to say that opinions upon, or steps taken in reference to, a suit in which the plaintiffs and defendant are putting forward opposing contentions, can relate solely to the case of the plaintiffs, though they may not support the case of the defendant or impeach that of the plaintiffs. If the opposition to produce rested on this ground alone, I should feel bound, upon the authority of *Bustros* v. *White* (1) and *The Attorney-General* v. *Emerson* (2), to order their inspection notwithstanding the judgment in *Bewicke* v. *Graham* (3). In the last mentioned case the nature of the documents was not described, and the Court had no means of considering their materiality.

To allow a further affidavit being made relating to the privileged documents on the basis of this judgment I shall adjourn the summons for a week, making it at once absolute on the first head.

Attorneys for the plaintiffs: Messrs. *Craigie, Lynch and Owen.*

Attorneys for the defendant: Messrs. *Conroy and Brown.*

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15 B. 11.

CRIMINAL REVISION.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

IN RE SHIVAPPA BIN SHIDLINGAPPA.* [11th January, 1888.]

Criminal Procedure Code (Act X of 1882), ss 367 and 424—Judgment, contents of—Reasons for the finding necessary.

A District Magistrate, in disposing of an appeal, recorded the following judgment :—

"The affray was a faction fight between members of the two parties into which the society of Dhunshi seems to be split up. There is no good ground for doubting the justice of the Magistrate's finding that **[12]** the two appellants took part in the affray, and that the party to which they belonged were the aggressors. The appeal is dismissed, and the conviction and sentence are confirmed."

Held, that this was not a judgment in accordance with ss. 367 and 424 of the Code of Criminal Procedure (Act X of 1882).

[F., Rat. Unr. Cr. Cas. 772 (773); **R.**, 20 C. 353 (357); 6 C.P.L.R. 24 Cr.; 13 Cr. L.J. 559=15 Ind. Cas. 975=8 N.L.R. 84; Rat. Unr. Cr. Cas. 776 (777); Rat. Unr. Cr. Cas. 826 (827); Rat. Unr. Cr. Cas. 844 (845); **D.**, 1 C.W.N. 169.**]**

THIS was an application under s. 435 of the Code of Criminal Procedure (Act XIV of 1882).

The accused and two other persons were convicted by the Second Class Magistrate at Bankapur of committing affray under s. 160 of the Indian Penal Code and were sentenced to a fine of Rs. 50 each.

Against this conviction and sentence the accused appealed to the District Magistrate, who passed the following order :—

"The affray was a faction fight between members of the two parties into which the society of Dhunshi seems to be split up. There is no good ground for doubting the justice of the Magistrate's finding that the two appellants took part in the affray, and that the party to which they

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* Criminal Review No. 239 of 1887.

(1) L.R. 1 Q.B.D. 423. (2) L.R. 10 Q.B.D. 191. (3) L.R. 7 Q.B.D. 400.