1910.

UMABAI v. BHAU BALWANT.

Under these circumstances I have no option but to hold that the plaintiff has clearly misjoined in this suit both parties and causes of action. I would like to say here that even if the conclusion to which I have arrived had been different, I would still have held that the causes of action joined in this suit could not conveniently be tried or disposed of together and considered what would have been the right order to make under the discretion vested in the Court by rule 6 of Order II.

Having, however, come to the conclusion that the suit as constituted is bad by reason of misjoinder of parties and of causes of action I find the 5th issue in the affirmative.

I will give the plaintiff the option of electing against which defendant or defendants she proposes to go on with the suit and when she has made her election, I will proceed to consider my decision on the 4th issue as to whether this Court has jurisdiction to entertain the suit against the particular defendant or defendants against whom the plaintiff elects to proceed.

Attorneys for the plaintiff:—*Messrs. Chitnis & Co.*

Attorneys for the 1st defendant:—*Messrs. Dikshit, Dhunjisha and Sunderdas.*

B. N. L.

ORIGINAL CIVIL.

Before Mr. Justice Macleod.

1909. *July* 26.

PERURI SURYANARAYAN AND COMPANY, PLAINTIFFS, *v.* GULLAPUDI CHINNA NARSINGHAM AND ANOTHER, DEFENDANTS.*

Arbitration—Reference by parties to a suit—Application to stay proceedings—Arbitration Act (IX of 1899), section 19.

Section 19 of the Arbitration Act only applies where there has been a submission to arbitration before the commencement of legal proceedings.

Ramjidas Poddar v. *Howse* (1), followed.

THIS matter was heard in Chambers. The plaintiffs on the 17th September 1908 filed a suit as a Short Cause against the

* Original Suit No. 783 of 1908.

(1) (1907) 35 Cal. 199.

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PERURI SURYA-NARAYAN & Co. v. GULLAPUDI CHINNA.

defendants to recover Rs. 6,377-14-0 with interest due on certain money transactions. A warrant for attachment before judgment was obtained by the plaintiffs and attachment levied, but, later, as the result of an agreement between the parties to refer their dispute to arbitration, a consent order was taken discharging the warrant. Subsequently, however, the defendants, contending that the plaintiffs had delayed in raising the attachment and that therefore the agreement to refer was at an end, refused to proceed to arbitration. The suit came on for hearing in due course, but was adjourned from time to time by consent. Eventually the plaintiffs applied by petition for a stay of the legal proceedings, and notice was issued to the defendants on the 1st April 1909.

Robertson for the respondents (defendants) to show cause.

Strangman (Advocate-General) for the petitioners (plaintiffs).

MACLEOD, J.—The question in this notice is whether when the parties to a suit agree to refer the questions in dispute to arbitration, one of the parties can apply to the Court under section 19 of the Arbitration Act for stay of proceedings.

It is contended by Mr. Robertson for the respondents that by section 2 of the Act it is clear that the Act only deals with cases where references to Arbitration are made before proceedings are taken and, therefore, it would follow that unless there has been a submission to arbitration before the suit is filed, an application for stay of proceedings cannot be made under section 19. This is supported by the decision of the Appeal Court in Calcutta in the case of *Ramjidas Poddar* v. *Howse*[1], in which the learned judges were decidedly of opinion that the Act only applied to cases where there had been a submission to arbitration before the commencement of legal proceedings. That case, of course, is entitled to the very best consideration I can give it. But apart from that case, I should certainly be inclined to decide that Mr. Robertson's argument is correct and that the Act only applies to cases where references are made before proceedings are taken. No doubt, it

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would have been possible for the Legislature to legislate so that the Act should apply to cases where a reference is made after proceedings have been taken, but it is clear that they did not do so when they framed the Arbitration Act of 1899. Section 19 seems to me perfectly clear. It says:

"Where any party to a submission to which this Act applies or any person claiming under him, commences any legal proceedings" &c.

Therefore, such a person must be a party to a submission before the commencement of the proceedings. In this case it is admitted that the submission was made after the proceedings commenced, and, therefore, it is not competent for any party to apply under section 19 to stay the proceedings.

Attorneys for the applicants: *Messrs. Jamshedji, Rustomji and Devidas.*

Attorneys for the opponents: *Messrs. Matubhai, Jamietram and Madan.*

K. McI. K.

ORIGINAL CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

1909. *July* 30.

SHAPURJI HORMASJI HARVER, APPELLANT AND DEFENDANT, *v.* MONOSSEH JACOB MONOSSEH, RESPONDENT AND PLAINTIFF.*

Costs—Guardian ad litem of a lunatic—Personal liability of guardian to pay costs incurred by unnecessary appeal.

The guardian *ad litem* appointed by the Court usually gets his costs out of the estate of the defendant whom he represents if he does not recover them from the plaintiff, but when a guardian *ad litem* takes it upon himself to appeal against a decree, he puts himself in the position of a next friend initiating proceedings, and no longer is in the position of a passive guardian *ad litem*.

* Original Suit No. 406 of 1907.
Appeal No. 53 of 1908.