

CIVIL REFERENCE.

Before Sir W. Comer Peiheram, Knight, Chief Justice, and Mr. Justice Beverley.

1886
November 26. KEDAR NATH BHATTACHARJI (PLAINTIFF) v. GORIE MAHOMED
(DEFENDANT).*

Right of Suit—Subscription, Suit for—Liability of subscribers to a proposed Town Hall.

A suit will lie to recover a subscription promised, the subscriber knowing that, on the faith of his and other subscriptions, an obligation is to be incurred to a contractor for the purpose of erecting a building to be paid for out of the monies subscribed.

THIS was a reference from the Howrah Court of Small Causes.

It appeared that it was thought advisable to erect a Town Hall at Howrah, provided sufficient subscriptions could be got together for the purpose. To this end the Commissioners of the Howrah Municipality set to work to obtain the necessary funds by public subscription, creating themselves, by deed, trustees of the Howrah Town Hall Fund. As soon as the subscriptions allowed, the Commissioners, including the plaintiff, who was also Vice-Chairman of the Municipality, entered into a contract with a contractor for the purpose of building the Town Hall; estimates and plans were submitted to, and approved by, the Commissioners, the original estimate amounting to Rs. 26,000. This estimate, however, was increased to Rs. 40,000, and it was found that the subscriptions would cover this amount, and the original plans were therefore enlarged and altered.

The defendant was a subscriber to this fund of rupees one hundred, having signed his name in the subscription book for that amount. The defendant not having paid his subscription was sued in the Howrah Court of Small Causes by the plaintiff as Vice-Chairman and Trustee, and therefore as one of the persons who had made himself liable to the contractor for the costs

* Civil Reference No. 13A of 1886, made by Baboo Krishna Mohun Mukerji, Officiating Judge of Small Cause Court of Howrah, dated the 8th of August 1886.

of the building, to recover the amount entered in the subscription book. Leave to sue, on behalf of himself and all others in the same interest with himself, was granted to the plaintiff by the Registrar of the Court under s. 30 of the Civil Procedure Code.

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The defendant contended that the plaintiff had no right to sue. The Judge of the Small Cause Court held that the Registrar had no power to grant leave to sue; that the Town Hall being trust property, the case was one falling under s. 437 of the Code; and that, therefore, the suit was bad *ab initio*. And on the question as to whether such a suit would otherwise lie, after referring to the case of *Kedar Nath Mitra v. Alisar Rohoman* (1) he found that the defendant was a man of no education and it could not therefore be expected that he had put his name to the subscription book with a full knowledge of the object and utility of the Town Hall. He, therefore, found that the defendant was under no legal obligation to pay, and dismissed the suit, making his judgment contingent on the opinion of the High Court on the following points:—

(1). Whether the suit as laid by the plaintiff was legally maintainable? (2). Whether, upon the facts stated, the trustees were entitled to judgment?

On the reference coming up before the High Court,—

Baboo *Rash Behari Ghose* and Baboo *Uma Kali Mukerji* appeared for the plaintiff.

Baboo *Juggat Chunder Banerji* for the defendant.

The opinion of the Court (PETHERAM, C.J., and BEVERLEY, J.) was delivered by

PETHERAM, C.J.—The questions which are proposed for us in this Reference from the Small Cause Court are, first whether the suit as laid by the plaintiff is legally maintainable; and secondly, whether, upon the facts stated in the Reference, the trustees are entitled to judgment.

The facts of the case appear to be these: The plaintiff is a Municipal Commissioner of Howrah and one of the trustees of

(1) 10 C. L. R., 197.

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the Howrah Town Hall Fund. Some time ago, it was in contemplation to build a Town Hall in Howrah, provided the necessary funds could be raised, and upon that state of things being existent, the persons interested set to work to see what subscriptions they could get. When the subscription list had reached a certain point, the Commissioners, including the plaintiff, entered into a contract with a contractor for the purpose of building the Town Hall, and plans of the building were submitted and passed, but as the subscription list increased the plans increased too, and the original cost, which was intended to be Rs. 26,000 has swelled up to Rs. 40,000; but for the whole Rs. 40,000 the Commissioners, including the plaintiff, have remained liable to the contractor as much as for the original contract, because the additions to the building were made by the authority of the Commissioners and with their sanction. The defendant, on being applied to, subscribed his name in the book for Rs. 100, and the question is, whether the plaintiff, as one of the persons who made himself liable under the contract to the contractor for the cost of the building can sue, on behalf of himself and all those in the same interest with him, to recover the amount of the subscription from the defendant.

We think he can. Without reference to his being a trustee or a Municipal Commissioner, we think that under the provisions of the Code of Civil Procedure he is entitled to bring an action on behalf of himself and others jointly interested with him. If the action could be maintained on behalf of all, and there were no other section which would preclude this being done, that would cure any technical defect in the case.

Then the question is, whether this is a suit which could be maintained by the whole of the persons who made themselves liable to the contractor if they were all joined.

It is clear that there are a great many subscriptions that cannot be recovered. A man for some reason or other puts his name down for a subscription to some charitable object, for instance, but the amount of his subscription cannot be recovered from him because there is no consideration.

But in this particular case, the state of things is this: Persons were asked to subscribe, knowing the purpose to which the

money was to be applied, and they knew that on the faith of their subscription an obligation was to be incurred to pay the contractor for the work. Under these circumstances, this kind of contract arises. The subscriber by subscribing his name says, in effect,—In consideration of your agreeing to enter into a contract to erect or yourselves erecting this building, I undertake to supply the money to pay for it up to the amount for which I subscribe my name. That is a perfectly valid contract and for good consideration ; it contains all the essential elements of a contract which can be enforced in law by the persons to whom the liability is incurred. In our opinion that is the case here, and therefore we think that both questions must be answered in the affirmative, because, as I have already said, we think that there is a contract for good consideration, which can be enforced by the proper party, and we think that the plaintiff can enforce it, because he can sue on behalf of himself and all persons in the same interest, and, therefore, we answer both questions in the affirmative, and we consider that the Judge of the Small Cause Court ought to decree the suit for the amount claimed, and we also think that the plaintiff ought to get his costs including the costs of this hearing.

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