1895.
July 16.

READ *v.* SAMSUDIN.

C. R., Colombo, 8,823.

Action by secretary of a voluntary association—Inadmissibility of technicalities of law in Courts of Requests—Right of plaintiff to sue—Motion to take plaint off the file—Proper mode of dealing with the question of right to sue—Civil Procedure Code, s. 16—Costs.

A voluntary association cannot by agreement between its members give any individual the right to sue on their behalf.

Where it is practically impossible for a body of numerous members to appear as plaintiffs, the Court may make an order under section 16 of the Civil Procedure Code, permitting one or more of such members to sue on behalf of the rest.

It is not the duty of a Judge to throw technical difficulties in the way of administering justice. He ought to remove them out of the way upon proper terms as to costs and otherwise.

In a Court of Requests all technicalities of law should be avoided.

When a plaint, defective in some material respect, has been filed, it is not necessary to move that it be taken off the file, but it is the duty of the Court, of its own accord, or upon its attention being called, to reject the plaint or return it to plaintiff for amendment. If the plaint is good *ex facie*, any objection thereto must be taken by the answer.

Where defendant, a member of a voluntary association, objected at the trial to the reception of certain rules made by the association, on the ground that such rules were not included in any list of documents filed by the plaintiff,—

Held, that defendant should be deprived of his costs in the Court below.

1895.
July 16.

BONSER, C.J.

THIS was an appeal preferred by the plaintiff against the dismissal of an action which he had brought in the Court of Requests of Colombo as Honorary Secretary of an institution known as the Colombo Library, for the recovery of a certain sum of money said to be due by the defendant, who was one of its members, for monthly subscriptions unpaid, and for the value of certain books taken out by him and not returned.

The facts in detail are set forth in the judgment of his Lordship the Chief Justice.

Jayawardena, for the appellant,—

The plaintiff has no right to maintain this action as the Honorary Secretary of the Colombo Library, such library being a merely voluntary association, and a voluntary association cannot even by agreement between the members give any individual the right to sue on behalf of the members. He cited *Evans v. Hooper, 11 Q. B. D. 45; Gray v. Pearson, 5 C. L. R., 568; I. L. R. 14 Madras, 362.*

Dornhorst, for respondent.—The authorities cited do not apply because, according to the rules of the library to which the defendant subjected himself when he became member, the secretary has power to sue. The objection, even if valid, is a purely technical one, and could be met by amendment.

16th July, 1895. BONSER, C.J.—

In this case the plaintiff, describing himself as Honorary Secretary, Colombo Library, sued the defendant to recover certain subscriptions alleged to be due to the Colombo Library, and the value of certain books which were said to have been taken out by the defendant from the library and never returned.

The defendant, in the first paragraph of his answer, denied the plaintiff's right to sue.

When the case came on for trial, evidence was given on behalf of the plaintiff in support of the action, and the plaintiff sought to put in a copy of the rules of the library. This was objected to, on the ground that the rules of the library were not included in any list of documents filed by the plaintiff, although they were referred to in the plaintiff's statement of claim, and were evidently relied on. That such an objection should have been upheld is to me astounding, especially in a Court of Requests, which is a Court from which all technicalities should be banished.

There was no question of these being the rules of the society. The objection was purely a technical one.

1895.
July 16.
BONSER, C.J.

Now, I will read what one of the greatest Judges that ever adorned the bench, Sir George Jessel, Master of the Rolls, said on this subject in the case of *Jones v. Chennell, 8 Ch. D, 506.* An objection had been taken there to the admission of certain depositions, on the ground that the proper notice of intention to read them required by law had not been given. He says: "That "notice was not given, but the appellant endeavoured to read the "evidence and tender it in the Court below. It was rejected "upon the ground of want of notice. It is disputed whether or not "the counsel for the party desiring to use that evidence did or "did not ask for an adjournment; but in my opinion the Judge "below ought to have granted the adjournment as a matter of "course without being asked for it. It is not the duty of a Judge "to throw technical difficulties in the way of the administration of "justice, but where he sees that he is prevented from receiving "material or available evidence merely by reason of a technical "objection, he ought to remove the technical objection out of the "way, upon proper terms as to costs and otherwise. I have "known an objection taken at the trial to the admission of a "document which everybody knew to be a genuine one; and I "have known the Judge say to the person taking the objection, 'I "'will adjourn the cause, but reserve the costs,' and thereupon "the objection has been withdrawn. That I have seen more than "once, and I cannot help thinking that if the Judge in the Court "below had offered the adjournment, the other side would have "allowed the evidence to be read."

Those observations of the late Master of the Rolls ought to be borne in mind by every Judge in this Colony.

The trial went on, and the Commissioner gave judgment for the plaintiff. He overruled the objection taken by the defendant in his answer to the right of the plaintiff to sue, on the ground that the objection ought to have been raised by a motion to take the plaint off the file, and that by answering to the merits the defendant has practically admitted the sufficiency of the plaintiff's authority and of the allegations in the plaint. Now, I must confess I cannot understand this. There is no provision in the Ordinance for such a motion as the Commissioner refers to. The Code makes it the duty of the Court to scrutinize the plaint before it is received, to see that it complies with all the requirements of the Code, that it is duly stamped, that it discloses a good cause of action, &c.; and if after having carefully examined the plaint the Court is satisfied that the plaint complies in all respects with the requirements of the law, then the Court is bound to accept the

plaint. The Code lends no countenance to any such practice as that suggested of a motion by defendant to take the plaint off the file.

If the plaint is defective in some material points, and that appears on the face of the plaint, but by some oversight the Court has omitted to notice the defect, then the defendant, on discovering the defect, may properly call the attention of the Court to the point, and then it will be the duty of the Court to act as it ought to have done in the first instance, either to reject the plaint or to return it to the plaintiff for amendment. If the plaint is a good one on the face of it, but the defendant has reason to urge why the plaintiff is not entitled to sue him, that objection must be taken by the answer.

I hope this is the last occasion on which we shall hear of a motion in a Court of Requests to take a plaint off the file.

In my opinion the objection that plaintiff had no right to sue this defendant was rightly taken by the answer, and ought to have been disposed of by the Judge. Now, the objection taken by the defendant is this. He says: "You (the plaintiff) have no right to "sue me. I have not injured you, nor is there any contract between "you and me under which you can sue me. I am a member of a "voluntary association called the Colombo Library, and the per- "sons who are injured, if any one is injured by my conduct, are the "other members of that association, and it is they, and they alone, "who can sue me." I think that is a good objection. No contract was proved between the defendant and the plaintiff which gave the plaintiff the right to sue this defendant. It was said that the rules of the library authorized the secretary to sue, but in my opinion the cases referred to by Mr. Jayawardena—*Evans v. Hooper (1. Q. B. D. 45); Gray v. Pearson* (*5 C. L. R., 568*)—show that voluntary associations cannot by agreement between the members give any individual the right to sue on behalf of the members. Therefore I think this objection ought to have been upheld and the plaintiff's action dismissed.

The defendant will have the costs of this appeal. But there will be no costs in the Court below. I deprive the defendant of his costs in the Court below, because he insisted on the objection as to the admissibility of the rules.

I should add that the Code in section 16 makes provision for such a case as this, where it is practically impossible for a numerous body of members to be made plaintiffs. The Court may make an order permitting one or more of such members to sue on behalf of all parties so interested.