

WYREMUTTU v. ELIYATAMBY.

D. C., Batticaloa, 1,696.

1896.

October 8.

Civil Procedure Code, s. 32, sub-s. 2—Joinder of causes of action.

Plaintiff, in his personal capacity, and as administrator of the estate of his deceased wife, sued defendant on a bond on which plaintiff and his wife were obligees. With that claim plaintiff joined a claim as administrator of his deceased wife for a gold ornament which belong to his wife, and which was in defendant's possession.

Held, that the joinder of these two claims in one action was not obnoxious to sub-section 2 of section 35 of the Civil Procedure Code.

Per WITHERS, J.—If plaintiff was suing for the gold ornament in his personal capacity, he could not well join his claim for it with the other cause of action.

THE facts of the case sufficiently appear in the judgments.

Wendt, for appellant.

Sampayo, for respondent.

8th October, 1896. BONSER, C.J.—

The District Judge has made a mistake in rejecting this plaint. The plaintiff is the administrator of his deceased wife. He and his wife were joint obligees of a bond given by the defendants. The plaintiff in his personal capacity, and also as administrator of his deceased wife, sues on the bond. With that claim he joins a claim as administrator of his deceased wife for a gold ornament belonging to his wife, which is in the possession of the defendants. The District Judge has held that these two causes of action cannot be joined in one suit.

It seems to me that he has misunderstood section 35, sub-section 2, of the Civil Procedure Code.

The defendant should be called upon to answer.

The plaintiff will have his costs both in the Court below and in this Court.

WITHERS, J.—

I concur. The Judge was perhaps misled by the impression that the plaintiff was suing for the restoration of the *tháli* in his private capacity. If he was so suing he could not very well have joined this with the other cause of action. The circumstances disclosed in the plaint show that the plaintiff was suing for the recovery of the *tháli* in a representative capacity. In fact it is only as administrator of his wife's estate that he can claim the restoration of this article from the defendants, who, he says, unlawfully detain it.