1906.
April 5.

Present: Mr. Justice Wood Renton.

DON SIMON APPUHAMI *et al.* *v.* MARTHELIS ROSA.

C. R. Negombo, 13,370.

Misjoinder of causes of action—Several persons injured by one wrongful act—Distinct causes of action—One suit—Civil Procedure Code, ss. 11 *and* 17.

Where two persons, who were arrested and charged together with the same offence in the same case and were acquitted, sued in one action for damages for malicious arrest and malicious prosecution—

Held, that the cause of action accruing to each was separate and distinct, and that the two causes of action should not have been combined, and that the suit was bad for misjoinder of causes of action.

The principle laid down in *Sadler v. The Great Western Railway Co.* (1896) App. Cas. 450 followed.

The authority of *Booth v. Briscoe* (2 *Q. B. D.* 496) doubted.

THE plaintiffs sued the defendant in one action for damages for malicious arrest and malicious prosecution, in that the defendant falsely and maliciously and without reasonable or probable cause, caused them to be arrested on a charge of causing mischief to a bull and thereafter prosecuted them for the same offence in the Police Court of Negombo.

The Commissioner entered judgment in favour of the plaintiffs for Rs. 105.

The defendant appealed.

E. W. Jayewardene, for defendant, appellant.

There are two plaintiffs in the case. They have two distinct claims, and two distinct causes of action against the defendant. The principle involved is the same as in *Smurthwaite v. Hannay* (1) which was followed in *P. & O. Steam Navigation Co. v. Tsune Kijima* (2) and *Carter v. Rigby* (3). The case of the improper joinder of defendants is similar in principle. In *Sadler v. The Great Western Railway Co.* (4) the House of Lords held that claims for damages against two or more defendants in respect of their several liability for separate torts cannot be combined in one action. A tort is a separate tort in respect of each man who complains.

Section 26 of the Indian Code is the same as section 11 of our Code; such a joinder of plaintiffs as in this case has been held to be bad (5).

(1) (1894) *A. C.* 494.
(2) (1895) *A. C.* 661.
(3) (1896) 2 *Q. B.* 113.
(4) (1896) *A. C.* 450.
(5) *I. L. R.* 11 *Cal.* 524; *I. L. R.* 8. *Mad.* 361.

The Judge has wrongly placed the *onus on* defendant. *Moss v. Wilson* (1).

R. Dornhorst, for plaintiffs-respondents.—The cause of action is the same and the plaintiffs rightly joined in one action. The object of the law is to avoid a multiplicity of actions.

Booth v. Briscoe (2) and *Gort v. Rowney* (3) support the present form of action.

E. W. Jayewardene, in reply.—In *Smurthwaite v. Hannay*, Lord Russell considered the cases of *Booth v. Briscoe* and *Gort v. Rowney* *Booth v. Briscoe* is practically over-ruled, and is no longer law.

5th April, 1906. WOOD RENTON J.—

I have had the advantage in this case of a clear and full argument on both sides, and I propose to give judgment at once. The two plaintiffs, who are the respondents in this appeal, sued the defendant-appellant for malicious arrest and prosecution, and the learned Commissioner of Requests has given judgment in their favour jointly for Rs. 105. It is contended by the appellant that there has been an improper joinder of these two plaintiffs, inasmuch as they have really separate causes of action, which, under sections 11 and 17, C. P. C., cannot be joined. It seems to me to be clear on the evidence that the causes of action involved in the present case are separate. It is true that the acts out of which the litigation arises are substantially the same—both the plaintiffs were charged with causing mischief to a bull, both were arrested and taken into custody together, and both were discharged after one and the same inquiry; but these considerations do not in my opinion affect the question of the cause of action. A cause of action is a legal wrong or claim. It is a legal entity distinct from the facts out of which it arises. Each of these plaintiffs has a separate right to proceed against the defendant. It is a right which could have been asserted in distinct proceedings and tried before different courts. It might quite well be, that even the facts out of which the cause of action arises might not prove to be identical. It has been held in England in the case of *Sadler v. The Great Western Railway Co.* (4) that claims for damages of two or more defendants in respect of their several liability for a joint act cannot be combined in one action. In that case the allegation against defendants was, that by causing their cabs and vans to assemble for a long period on the highway in front of the appellant's premises they had caused a nuisance, and, in spite of the fact that it was the joint act of the two defendants which created the nuisance,

(1) 8 *N. L. R.* 368.
(2) 2 *Q. B. D.* 496.
(3) 17 *Q. B. D.* 625.
(4) (1896) *A. C.* 450.

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it was held by the House of Lords that they could not be joined as defendants. So far as procedure of this kind is concerned, plaintiffs and defendants stand in the same legal position, and it seems to me that the principles which were laid down by the House of Lords in the case I have quoted apply *a fortiori* to the present case, where there is no ground for suggesting that the joint arrest, as part of the act in question, is a necessary element of the cause of action. I may point out that the case of *Sadler v. The Great Western Railway Co.* was decided under the English rules (see Rules and Orders under the Judicature Acts), which are wider in their terms than section 11, C.P.C. containing, as it does, an express limitation of the right of joinder in cases in which the cause of action is the same. I do not think that *Booth v. Briscoe* (1), even if it is still law in England, can be followed here, regard being had to the words " the same cause of action " in section 11, C.P.C. Mr. Dornhorst called my attention to section 36, C.P.C., which permits joinder of several causes of action by plaintiffs who are " jointly interested " in a cause of action against the same defendant. I can only say that I do not think that there is any joint interest in the two plaintiffs in the present case. I set aside the judgment appealed against, with the usual consequences. It will still be open to either plaintiff or both, if they are so advised, to bring separate actions in respect of the alleged injury for which that amount is claimed. At least there is nothing in my present judgment to prevent them from doing so. In regard to the merits, I shall of course say nothing here or now, except to call the attention of the learned Commissioner of Requests to some of the recent decisions of this Court, of which the case of *Moss v. Wilson* (2) is the latest, and may, I think, be taken as a typical instance as to the burden of proof and the facts which have to be proved by a plaintiff in such cases. I say this only because a perusal of the judgment which was brought to my notice by counsel has left some doubt in my mind as to whether the learned Commissioner was in the possession of these authorities.

(1) 2 *Q. B. D.* 496.

(2) 8 *N. L. R.* 368.