1945 *Present:* **Keuneman S.P.J. and Canekeratne J.**

GOONEWARDHENA, Appellant, *and* DUNUWILLE, Respondent.

71—D. C. (Inty.) Kandy, 1,702.

Civil Procedure—Discovery—Some interrogatories which Court will not allow.

The Court will not allow interrogatories which (1) are too wide, (2) are only remotely connected with the issues in the case, (3) merely bear upon the credit of a witness or the opposite party, (4) are scandalous, vexatious or oppressive.

APPEAL from a judgment of the District Judge of Kandy.

N. Nadarajah, K.C. (with him *H. W. Thambiah*), for the defendant, appellant.

N. E. Weerasooria, K.C. (with him *N. K. Choksy* and *I. M. Ismail*), for the plaintiff, respondent.

Cur. adv. vult.

November 28, 1945. CANEKERATNE J.—

The plaintiff was unsuccessfully prosecuted in the Magistrate's Court, Kandy, by one Abdulla for giving a bribe to a voter and by one Silva for giving bribes to two voters; the plaintiff's claim against the defendant is one which is based on a conspiracy between the defendant and these

two persons to charge the plaintiff with bribery; the allegation is that a wilful act was committed by the defendant. The defendant simply denies it: he denies the conspiracy, he denies the act and instigation alleged in the plaint. The whole obligation of proof is on the plaintiff.

The plaintiff delivered 48 interrogatories to the defendant to obtain discovery of certain matters from his opponent: the defendant filed an affidavit objecting to answer any of the interrogatories. At the inquiry into this matter the plaintiff's counsel did not press 18 interrogatories. The learned Judge ordered the defendant to answer all the other interrogatories.

The parties do not seem to have realised, when the question came up for discussion before the learned Judge, that not every matter that is relevant in the sense in which the word is used in the Evidence Ordinance can be made the subject of examination by discovery. Examining witnesses at a trial and obtaining discovery before the trial are totally different matters.

It is the right, as a general rule, of a plaintiff to exact from the defendant a discovery upon oath as to all matters of fact which being well pleaded in the bill, are material to the plaintiff's case about to come on for trial and which the defendant does not by his form of pleading admit [1]. A properly drawn pleading ought to contain a statement of the facts, and these facts only, which if proved will entitle the plaintiff to relief. It ought not to contain the evidence of those facts [2]. In determining whether particular discovery is material or not, the Court will exercise a discretion in refusing to enforce it, where it is remote in its bearings upon the real point in issue, and would be an oppressive inquisition [3].

The interrogatories in the present case are divisible into two classes: there is an allegation of some association between the defendant and the two complainants in one series, while there is an absence of any such association in the other. The transactions referred to in the first series appear to relate to very material facts with regard to the the inference that may be drawn from them as to the facts in issue. Discovery is reasonable in these instances.

The order of the learned Judge in respect of interrogatories bearing numbers 6, 18, 28, 29, 43, 46 and 47 will stand. Interrogatory 7 refers to payments alleged to have been made by two persons who are not parties to this case and the defendant might find some difficulty in answering it. The order of the learned Judge will stand in respect of part (*b*) of this interrogatory.

Interrogatory 31 refers to two persons mentioned in the plaint and another. The defendant had a right to know what were the occasions referred to in the interrogatory; it is difficult to separate one part of the interrogatory from the other parts; as it stands it is too wide. It is therefore disallowed.

[1] *Wigram Discovery, page 15.* [2] *Kennedy v. Dodson, 1895, 1 Ch. at page 140.*
[3] *Wigram Discovery, page 165.*

The plaintiff further wants information as to a number of transactions which took place between the defendant and third persons : these are matters that can only be remotely, connected with the issues in this case; he is not bound to prove them for the purposes of the action although such matters may indirectly assist his case. The defendant cannot be compelled to answer such questions.

Interrogatory 1 : the tendency of the question, assuming that the defendant took these letters, is merely to bear upon the credit of the witness, not upon a material fact involved in the issue before the Court. The one transaction is not shown to be specifically connected with the other; and they are not linked together in any assignable way. It is an attempt to obtain evidence concerning collateral facts which furnish no legal presumption as to the principal facts in dispute. It is vexatious to ask the defendant to answer interrogatory 5. Interrogatories 3 and 4 are not directly relevant.

Interrogatories 17, 19, 20 and 25 :—Certain persons, not those referred to in the pleadings, are alleged to have had conversations with the defendant about the cases referred to in the plaint : it would appear from the questions framed that these persons conceived themselves to be justified in passing on to the plaintiff the substance of what the defendant is alleged to have stated. The interrogatories relate to the truth or untruth of the statements alleged to have been made; they are merely directed to impeach the credit of the defendant and are not directly relevant to the case. It may be very convenient to the plaintiff to have such discovery, and it may enable the plaintiff to prepare for trial with less apprehension and with less expense but the question to be considered is whether he is entitled as a matter of right to discovery from the opposite party and in my opinion he is not.

Interrogatories 21 and 23 are not fit and proper questions to be put to the defendant : they seem to be scandalous. Interrogatory 22 relates to what a third person is said to have done at a dewale. This is irrelevant to the inquiry. So are interrogatories 26, 27 and 30 : these are disallowed. Interrogatory 44 is vexatious and oppressive. The defendant has a right to know the names of the witnesses referred to : he is also entitled to know from the plaintiff when the alleged visit or visits took place. It is a question whether the interrogatory may not be allowed in a modified form. The appellant's counsel contends that the Court should not allow a modification. Considering the way in which the interrogatories have been framed by the plaintiff I do not think this is a case where relief may be granted to him. I therefore disallow this interrogatory. The order of the learned Judge is set aside also as regards interrogatories numbered 1, 2, 3, 4. 32, 42, 44 and 45. The plaintiff will pay the costs of appeal. The costs in the lower Court will be the costs in the cause.

KEUNEMAN S.P.J.—I agree.

Appeal partly allowed.