

# CALCUTTA HIGH COURT

The Oriental Bank Corporation

Vs

J.A. Charriol

(R Garth, C.J. Wilson, J.)

19.03.1886

## JUDGMENT

### **Wilson, J.**

1. who after stating the facts, continued as follows: In the Court below it was contended on behalf of the plaintiff Bank that there is no power under any circumstances to add a party defendant on his own application. This content was not pressed before us, and we entertain no doubt that the view taken by the learned Judge on this point is correct.

2. And, the Court having this power, the present case is one in which it is especially desirable to exercise it. The fund is in Court, and by the act of the Court in its order of the 8th February 1882. There is some reason to suspect that at the time then the order of the 8th February 1882 was obtained those who were in charge of the plaintiff Bank knew that bills of lading had been, or were likely to have been, issued in respect of the rice. If so, the suppression of the fact was a very grave matter indeed, and the plaintiff Bank which is trying to get the money out of Court is in liquidation.

3. But it was contended before us that the Limitation Act precludes the making of this order at the present stage. This point was not taken before the learned Judge of the Court below, but it was strenuously pressed upon us. It was said that the application of the Banque de la Reunion to be made a party was an application within the meaning of the Limitation Act, and an application not expressly provided for in the Act; and that therefore under Article 178 of the second schedule it must be made within three years of the time when the right to make the application accrued.

4. It was said further that the right to make this application accrued when the Banque de la Reunion acquired title by endorsement of the bills of lading: or, at latest, when by the dismissal of its own suit the true state of the case became known to it. But assuming that the article referred to applies to such a case, still we think this application was not barred. We think that the right of an outsider to claim to be made a party to a suit accrues when the necessity for his so claiming

arises. In the present case we think that, however it may have been before, a right to make this application accrued to the Banque de la Reunion in October last, when the person who had up to that time represented its interest and defended for its benefit ceased to have any voice in the suit, and the other parties proceeded to dispose by arrangement of the funds in Court behind its back.

5. Speaking for myself, I must say further, that in my opinion there can arise no question of limitation with respect to the Court's power to make such an order as that in question. There are two classes of provisions in the Procedure Code with regard to parties. One class of provisions confers rights upon plaintiffs and others, chiefly as to the original selection of parties--by chap. III, as to the addition or substitution of parties by reason of subsequent events in chap. XXI. For applications to be made to the Court in exercise of such rights, periods of limitation are frequently provided. In most of such cases if the rights given are not exercised within the time limited the ordinary consequence is that the suit comes to an untimely end. Thus, if a sole plaintiff or defendant die, and the representatives are not brought in within the time limited, the suit fails, and the Court has nothing more to do with it unless it can be and is revived. The second class of provisions does not give rights to parties, but confers powers and imposes duties upon the Court. The object of these provisions is not so much to prevent the abatement of suits, as to secure that if a suit does proceed and is adjudicated upon, that shall only be done in the presence of the proper parties, lest the Court should be made an instrument of injustice or fraud by determining rights, and even, as here, handing over property, without hearing the persons interested. The difference between these two classes of provisions is well illustrated by Sections 363 and 364. By Section 363 if one of several plaintiffs dies, and the cause of action survives to his representatives, together with the surviving plaintiffs, the representatives may come in and get themselves joined as plaintiffs; and a time is limited for their doing so.

6. If they do not apply within that time their right is gone. It may be that in such an event the suit will not proceed, in which case the Court has nothing to do with the matter. But by Section 364 the suit may proceed at the instance of the surviving plaintiffs; and if it does, the Court has power to do, and is bound to do the thing which the representatives have lost the right to claim; "the legal representative of the deceased plaintiff shall be made a party." The second paragraph of Section 32 belongs to this class of provisions. It says: "The Court may at any time, either upon or without such application (that is the application of either party), and on such terms as the Court thinks just, order that any plaintiff be made a defendant, or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit be added."

7. For the exercise of these powers and those conferred by other sections upon Courts no period of limitation is provided; and they are to be exercised in my opinion whenever the necessity for doing so is made apparent, so long as the case is sub judice. Any other view would, I think, lead

to disastrous consequences. It was suggested in the present case that, though the Court might act at any time of its own motion, it could not act on the application of any person if the right of that person to claim relief were barred. I do not think that is so. I do not see how the fact of any person's making an application, whether in time or out of time, can take away from the Court a power given to it to act at any time, either upon or without application.

8. Lastly, it was argued, that the Banque de la Reunion had been guilty of such laches that its petition ought to be rejected. But we see no laches. The practical necessity for its intervention arose when it became aware of the agreement of last October.

9. The appeal is dismissed with costs.