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and has to be prepared subsequently. It happens ordinarily that the time taken for obtaining a copy of the decree is longer than that taken in obtaining a copy of the judgment. The legislature therefore might well have thought it necessary, when reducing the period of limitation, to allow the time requisite for obaining a copy of the decree to be excluded, but not the time requisite for obtaining a copy of the judgment in addition thereto.

Inasmuch as we agree with the view expressed previously in *Wilayati Begam's* case (1) we hold that the application would *prima facie* be barred by time unless the applicant can show good cause for extension of time under section 5 of the Limitation Act. As we are informed that such an application has been filed, let this be put up with that application.

REVISIONAL CIVIL

Before Mr. Justice Niamat-ullah and Mr. Justice Collister

RURAMAL RAMNATH (PLAINTIFF) *v.* KAPILMAN MISIR AND OTHERS (DEFENDANTS)*

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Civil Procedure Code, section 115—"Case decided"—Order refusing application for amendment of plaint—Revision entertainable although other remedy available—Scope of section—Civil Procedure Code, order VI, rule 17—Refusal of jurisdiction or acting illegally in the exercise of it.

A suit was brought on a promissory note, but past dealings between the parties on account books which led to the execution of the note were recited. The plaintiff subsequently applied for amendment of the plaint, seeking to make the original consideration disclosed by the account books an alternative basis of his claim. This application for amendment was refused by the court. *Held*, in revision, that the refusal of the application for amendment of plaint amounted to a "case decided" within the meaning of section 115, Civil Procedure Code, and that in refusing the amendment the court had contravened the provisions of order VI, rule 17 of the Code and thereby had either

*Civil Revision No. 443 of 1933.

(1) (1925) 24 A.L.J., 349.

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failed to exercise a jurisdiction vested in it or had acted illegally or with material irregularity in the exercise of its jurisdiction.

It is not possible to give an exhaustive definition of the word "case"; but to limit the phrase "case decided" to the final disposal of the whole proceeding (suit or other proceeding equivalent thereto) is to deprive section 115 of a great deal of its utility. An interlocutory order which terminates a proceeding started by an application should be considered to be the decision of a "case" within the meaning of section 115, provided such proceeding is so far distinct from the suit itself that it can be separated from it as a collateral matter. The proceeding started by the application for amendment, and terminated by the order of refusal, was a proceeding which, though it related to the suit, was yet distinct and separable from it, so much so that if all traces of it were removed from the record, the suit itself as it originally stood would not be affected thereby.

Each case should be considered on its own merits, and the court should in doubtful cases err on the side of entertaining a revision rather than refusing to do so, if one of the grounds for revision mentioned in section 115 exists. Greater importance is to be attached to the merits of the order questioned in revision, because if the ends of substantial justice do not require interference, then interference can be refused even though a "case" might have been "decided" and even though the order is technically wrong.

Even where an appeal may ultimately lie, under section 105 of the Civil Procedure Code, from the order sought to be revised, a revision can be entertained, if it be expedient that such order should be revised to avoid unnecessary delay and expense to the parties.

Case law on the subject reviewed.

Messrs. *P. L. Banerji* and *Shiva Prasad Sinha*, for the applicant.

Mr. *Muhammad Ismail*, for the opposite parties.

COLLISTER, J.:—These are two applications in revision against an order of the Second Additional Subordinate Judge of Gorakhpur rejecting a petition of the plaintiff applicant to amend his plaint in a certain suit. The suit was for recovery of Rs.11,000 odd on the basis of a note of hand which is alleged to have been executed by defendant No. 1 on the 10th of October, 1932, the consideration for the said note of hand being the balance

which was found to be due from defendant No. 1 upon an accounting between the parties. Execution of the note of hand was apparently denied and the document was sent to the Examiner of Questioned Documents. The latter's report was against the plaintiff and accordingly on the 14th of July, 1933, the plaintiff applied for amendment of his plaint in such a manner as to base his claim alternatively on the *bahi khata* account. The application was rejected by the court below on the ground that the amendment sought for would change the basis of the suit. A similar application was made by the plaintiff a month later and it too was rejected on the 14th of August, 1933.

An objection is taken before us on behalf of the defendants respondents that the order of the court below does not amount to a "case decided" within the meaning of section 115 of the Civil Procedure Code. There are a number of reported cases of this Court in which the question as to what constitutes a "case decided" has been considered; but there is only one reported case—a single Judge case—which deals directly with the refusal of a court to allow an amendment of a plaint. I will discuss this latter ruling in its due place.

In 1921 a Full Bench of five Judges in the case of *Buddhu Lal* v. *Mewa Ram* (1) considered the question whether the finding of a court on an issue as regards jurisdiction could or could not be the subject of revision. The defendants in that case had raised a plea that the court had no jurisdiction to try the suit and the Munsif tried this issue separately from the other issues and found that the suit was cognizable by his court. Three of the learned Judges, PIGGOTT, J., RYVES, J., and GOKUL PRASAD, J., were of opinion that no case had been decided within the meaning of section 115 of the Civil Procedure Code and that the defendants had their remedy by way of appeal from the decree which might be passed in the

(1) (1921) I.L.R., 43 All., 564.

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suit if it were decided against them; but RAFIQ, J., and WALSH, J., took a contrary view and held that the High Court had jurisdiction to entertain a revision from the Munsif's order.

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In *Jagannath Sahu* v. *Chhedi Sahu* (1) an arbitrator who had been appointed by the court at the request of the parties refused to act and the defendant nominated certain other persons and prayed that any one of them be appointed as arbitrator. The plaintiff objected and prayed that the arbitration be superseded; but the court appointed a certain person to act as arbitrator on payment to him of Rs.100 which should be met by the parties in equal shares. The plaintiff refused to pay his share and the court thereupon ordered that the amount be recovered by attachment of his property. The question before this Court was whether the lower court's order was or was not a decision of a case within the meaning of section 115 of the Civil Procedure Code, and the Bench—consisting of my learned brother and SEN, J.,—found in the affirmative. The Court observed as follows: "On the 29th of May, 1928, the controversy between the parties was whether the arbitration should be superseded or should be continued and another arbitrator appointed . . . . . as desired by the defendant. The court settled that controversy by its order of that date, which directed that the arbitration should continue and appointed B. Ganesh Prasad to act as arbitrator. The controversy thus terminated. We think that the order of the learned Subordinate Judge in that connection was clearly an order deciding a case."

In *Abdul Wahid Khan* v. *Radha Kishen* (2) a mutwalli had applied to the District Judge for his permission to sell a certain property. Permission was granted, and the District Judge on a subsequent date accepted the offer of a certain person who wanted to buy the property; but thereafter and behind the latter's back he accepted

(1) (1928) I.L.R., 51 All., 501. (2) (1929) I.L.R., 51 All., 957.

the offer of another person and cancelled his acceptance of the offer of the first would-be purchaser. A Bench consisting of MUKERJI, J., and YOUNG, J., held that a case had been decided by the District Judge and that a revision therefore lay against his order and they observed that the words "a case decided by a court" mean "a matter which has been disposed of effectually by the court and not merely for the time being".

In the case of *Sumitra Devi* v. *Hazari Lal* (1) the court below had dismissed an application for leave to sue *in forma pauperis* on the ground that the case was weak on merits and that the Government Pleader had intimated his intention to dispute the fact of pauperism. The case came before a Bench consisting of the present Chief Justice and my learned brother and they found that the order of the court below amounted to a "case decided". The learned Judges discussed and analysed the Full Bench case of *Buddhu Lal* v. *Mewa Ram* (2) and pointed out that in that case RYVES, J., although agreeing generally with PIGGOTT, J., and GOKUL PRASAD, J., had confined his own judgment within very narrow limits and had only considered the question whether the decision of a single issue by a subordinate court in a suit which was still pending in that court was a case decided, and the learned CHIEF JUSTICE observed: "As the opinion of RYVES, J., alone turned the scale, the Full Bench is only authority for the proposition that no revision lies from a mere finding, even though that finding may relate to the question of jurisdiction. That case is no authority for the broader proposition that no revision will ever lie from an order which is merely an interlocutory one. In *Mahadeo Sahai* v. *Secretary of State for India* (3) PIGGOTT, J., himself did not consider that such a result necessarily followed from his judgment in the Full Bench case." In this same case

(1) (1930) I.L.R., 52 All., 927(932). (2) (1921) I.L.R., 43 All., 564.
(3) (1921) I.L.R., 44 All., 218.

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my learned brother in his judgment drew a distinction between the case of an application for permission to sue *in forma pauperis* being dismissed or rejected and the case in which a similar application is allowed. He observed: "I do not express any opinion as regards the question whether, if an application for leave to sue as a pauper is granted, a definite proceeding should be considered to terminate with the order granting such application so as to amount to a 'case' having been decided; but if the application for leave to sue as a pauper is rejected, I entertain no doubt that a definite 'case' should be deemed to have ended with the order of the court rejecting the application to sue as a pauper, because if the court fee is not paid subsequently, the claim of the pauper cannot be proceeded with; and if a revision is otherwise entertainable it cannot be contended that a 'case' has not been decided."

In *Radha Mohan Datt* v. *Abbas Ali Biswas* (1) a Full Bench of this Court held that an order setting aside an *ex parte* decree in defiance of the provisions of order IX, rule 13 of the Civil Procedure Code was a "case decided" within the meaning of section 115. The learned Judges observed: "We have no doubt that we have before us a proceeding, distinct from the suit itself, which commenced by an application to set aside the *ex parte* decree and which terminated by an order discharging the said decree." In that case, one of the questions before the Full Bench was whether an appeal indirectly lies, under section 105 of the Civil Procedure Code, from an order setting aside an *ex parte* decree, and the Court found that no such appeal lay.

In the case of *Puran Lal* v. *Rup Chand* (2) the lower court had appointed a certain person to act as arbitrator without having observed the formalities which are required by paragraph 5 of schedule II of the Civil Procedure Code, and a Bench of this Court consisting

(1) (1931) I.L.R., 53 All., 612 (630). (2) (1931) I.L.R., 53 All., 778 (782).

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of the present Chief Justice and my learned brother held that the court's order amounted to a "case decided" so as to empower the High Court to interfere in revision. My learned brother in his judgment remarked: "To take any other view would be to put a premium on unnecessary proceedings in which a large number of witnesses may be examined by the parties and the award which the arbitrator might eventually make may be declared by the court to have been made by an arbitrator who had been illegally appointed and had in consequence no jurisdiction."

In *Sidh Nath Tewari* v. *Tegh Bahadur Singh* (1) the court below had found that the word "assets" in section 73 of the Civil Procedure Code meant assets realised by sale in execution of a decree, and a Bench of this Court held that a revision lay against the order of the lower court. The late Chief Justice, SIR GRIMWOOD MEARS, observed: "The position today with regard to revisions is that there is no hard and fast rule about the matter and when it manifestly appears to be right and convenient and proper that this Court should decide a revisional application in preference to allowing the parties to embark on long and expensive litigation, it is within the competence of the court so to decide the revisional application."

In the case of *Lakshmi Narain Rai* v. *Dip Narain Rai* (2) a Bench of this Court took the view that an order determining the question whether an additional court fee should be paid or not marks the termination of a definite stage of the suit and settles the controversy between the parties on the particular point and is therefore an order deciding a case within the meaning of section 115; but this view was overruled by a Full Bench in *Gupta & Co.* v. *Kirpa Ram Brothers* (3). The learned CHIEF JUSTICE observed: "The court had jurisdiction to decide this point and if it has taken an

(1) (1932) I.L.R., 54 All., 516. (2) (1932) I.L.R., 55 All., 274.
(3) (1934) I.L.R., 57 All., 17.

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erroneous view of the law it has committed no irregularity."

In *Kishan Lal Babu Lal* v. *Ram Chandra* (1) the question whether an order of a court refusing to allow an amendment of the plaint was or was not a "case decided" came before a single Judge of this Court. In that case, the plaintiff had sued for recovery of a sum of money. The defendant in his written statement pleaded that some of the items were time barred and thereupon the plaintiff prayed for permission to amend his plaint in order to prove acknowledgment, but his application was rejected. KENDALL, J., held that the effect of the order of the court below was definitely to debar the plaintiff from proving a part of his claim and thus there was a final decision on that part of the case which would amount to a "case decided" under section 115 of the Civil Procedure Code.

The case in *Sunder Lal* v. *Razia Begam* (2) was the converse of the above. The plaintiff had sued for recovery of possession of a half share in a certain house. The defendant pleaded that the suit was not cognizable by the Munsif as the value of the share claimed was over Rs.5,000. Thereupon the plaintiff applied for amendment of her plaint; she said that the defendant had considerably added to the house and all that the plaintiff wanted was that the house be restored to its original condition and the additions be demolished. The Munsif allowed the plaint to be amended and a Bench of this Court held that no revision lay against that order. In that case, as pointed out by the learned CHIEF JUSTICE, the question of abandoning a part of the claim was a matter entirely depending on the option and choice of the plaintiff on which the trial court was not called upon to make any judicial exercise of its own discretion. The question whether a *refusal* to amend the plaint would or would not amount to a "case decided" was not considered in that case; but I am of opinion

(1) (1932) I.L.R., 55 All., 256 (2) [1934] A.L.J., 757.

that there is a distinction between an order allowing an amendment and an order refusing an amendment. Where a plaint is amended, the amendment appears on the face of the record and the suit proceeds accordingly; but when the amendment is refused, there is a termination of a "case" and, as it were, a chapter of the proceedings is closed. The plaintiff by claiming a right to amend his plaint lays a "case" before the court and by the court's order of refusal the "case" is "decided", the plaintiff being thereby barred from pursuing that portion of his claim.

In the Full Bench case of *Gupta & Co.* v. *Kirpa Ram Brothers* (1), to which reference has already been made, the Court observed: "Where the case is a proceeding which can be considered separate and distinct, and is finally disposed of by an order which terminates it, it may well be considered to be a case decided, although the suit has not in one sense been completely disposed of". and I am of opinion that the matter which is now before us falls within this category. I agree with the reasoning of KENDALL, J., in the case of *Kishan Lal Babu Lal* v. *Ram Chandra* (2) and I am clearly of opinion that the lower court's refusal to allow an amendment of the applicant's plaint was a "case decided" as contemplated by section 115 of the Civil Procedure Code.

It is true that in an appeal from the decree, the lower court's refusal to amend the plaint might be taken as a ground of objection under section 105 of the Civil Procedure Code, but the trend of opinion in this Court, as I have already shown, is that even where such an appeal may lie, an application for revision can be entertained by this Court if the effect of so doing will be to save time, money and labour. I have already quoted the remarks of this Court in *Puran Lal* v. *Rup Chand* (3) and in *Sidh Nath Tewari* v. *Tegh Bahadur Singh* (4); and in the case of *Kishan Lal Babu Lal* v. *Ram Chandra* (2),

(1) (1934) I.L.R., 57 All., 17 (22). (2) (1932) I.L.R., 55 All., 256.
(3) (1931) I.L.R., 53 All., 778. (4) (1932) I.L.R., 54 All., 516.

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KENDALL, J., observes at page 260: "The view has been expressed more than once that where the effect of allowing a revision, in a matter in which an appeal might also lie, will be a convenience to the parties and will save expense, the court will be inclined to interpret the provisions of section 115 liberally and to interfere with an order which has been passed without jurisdiction, or irregularly, illegally or with material irregularity in the exercise of its jurisdiction." This is the view which has generally found favour with this Court.

In the present case, the dealings between the parties culminated or merged in a note of hand; and when the plaintiff found that his suit on the basis of the note of hand might fail, he very naturally wanted to fall back on his original consideration. Order VI, rule 17 of the Civil Procedure Code provides that "all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties". The real question in controversy in the present case is whether the balance of account as shown in the promissory note was or was not due from the defendant and the foundation of the claim was the account books. In my opinion this is a case in which the lower court ought to have allowed the desired amendment and by refusing to do so it disregarded an express provision of law and failed to exercise a jurisdiction which was vested in it. I therefore hold the view that the application should be allowed and that the court below be directed to amend the plaint as prayed by the applicant.

NIAMAT-ULLAH, J.:—I am in entire agreement with the view expressed by my learned brother. The Full Bench case of *Buddhu Lal* v. *Mewa Ram* (1) had created an impression that no revision lies under section 115 of the Civil Procedure Code except where a suit or a miscellaneous case equivalent thereto, arising under a

(1) (1921) I.L.R., 43 All., 564.

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special enactment, such as the Guardians and Wards Act, Insolvency Act, etc., has been finally disposed of. Observations to the effect that no revision is maintainable against an interlocutory order passed in a pending suit are to be found in certain cases. The trend of more recent decisions, however, unmistakably shows that this view is not now accepted in this Court and that revisions have been entertained against an interlocutory order, provided it is one which can be considered to amount to a "decision" of a "case". It was permissible to take this view in spite of the Full Bench case above referred to, which was carefully analysed by a Division Bench of this Court in *Sumitra Devi* v. *Hazari Lal* (1), in which it was pointed out that of the five Judges who constituted the Full Bench two maintained that a revision lay from a finding on an issue relating to the jurisdiction of the court recorded during the pendency thereof. Two other learned Judges took a contrary view and made observations considerably narrowing the scope of a revision under section 115. The fifth learned Judge (RYVES, J.) concurred with the latter two only in the conclusion and did not commit himself to the view as regards the scope of section 115. As pointed out in the Division Bench case last referred to, the Full Bench case is only an authority for the proposition that no revision lies where the trial court has merely recorded a finding on one of the issues arising in the case and was proceeding with the suit.

There are no less than two later Full Bench decisions of this Court in which it has been definitely held that a revision may lie from an interlocutory order passed in a suit: see *Radha Mohan Datt* v. *Abbas Ali Biswas* (2) and *Gupta & Co.* v. *Kirpa Ram Brothers* (3). In both of these cases it was held that, where a proceeding "distinct" from the suit itself is finally terminated by an order which is interlocutory in its nature, a revision lies

(1) (1930) I.L.R., 52 All., 927. (2) (1931) I.L.R., 53 All., 612.
(3) (1934) I.L.R., 57 All., 17.

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under section 115. To the same effect are several Division Bench rulings, some of which are referred to in the judgment of my learned brother. Indeed, in one case MEARS, C.J., observed "that there is no hard and fast rule about the matter, and when it manifestly appears to be right and convenient and proper that this Court should decide a revisional application in preference to allowing the parties to embark on long and expensive litigation, it is within the competence of the court so to decide the revisional application." See *Sidh Nath Tewari* v. *Tegh Bahadur Singh* (1).

The question, which is sometimes one of nicety, is whether a particular interlocutory order can be said to decide a "distinct" proceeding amounting to a "case". It seems to me that the word "case" is not a term of art. It has not been defined, and it is not possible to define it otherwise than in the manner indicated in the later Full Bench rulings mentioned above. On the one hand, it is not right to say that every controversy in a suit or proceeding should be considered to be a "case" in itself, as WALSH and RAFIQ, JJ., were inclined to hold in *Buddhu Lal* v. *Mewa Ram* (2). On the other hand, to limit it to the final disposal of the whole proceeding (suit or proceeding equivalent thereto) is to deprive section 115 of a great deal of its utility. I am of opinion that an interlocutory order which terminates a proceeding started by an application should be considered to be the "decision" of a "case" within the meaning of section 115, provided such proceeding is so far distinct from the suit itself that it can be separated from it as a collateral matter. I realise that the words "distinct" and "collateral matter", used by me, are as indefinite as the word "case" itself. I think it is not possible to give an exhaustive definition of the word "case" and that any attempt to define it, so as to embrace all revisable orders, is apt to give rise to complications and conflict of

(1) (1932) I.L.R., 54 All., 516 (517). (2) (1921) I.L.R., 43 All., 561.

opinion. I would, therefore, consider each case on its own merits and find whether the rule accepted in the later Full Bench cases is applicable to it. In my opinion the court should err in doubtful cases on the side of entertaining a revision rather than refusing to do so, if it is found that the subordinate court exercised a jurisdiction not possessed by it or failed to exercise its jurisdiction, or acted illegally or with material irregularity in the exercise of it. Greater importance is to be attached to the merits of the order questioned in revision, because, if the ends of substantial justice do not require interference, this Court can refuse to correct errors in the order challenged in revision, even though a "case" might have been "decided" and even though the subordinate court's order was technically wrong.

Coming to the merits of this particular case, I think the lower court decided a "case" when it rejected the plaintiff's application for amendment of his plaint. I have examined the plaint and find that the plaintiff claimed a certain sum of money on the allegation that the parties had dealings for a number of years, and that in the plaintiff's account books there were debit and credit entries, which were examined by the parties who agreed on a certain date that a certain amount was due to the plaintiff for which the defendant executed a promissory note. The plaint, as it originally stood, made the promissory note as the basis of the suit, though past dealings leading to the execution of the note were recited. The application for amendment sought to make the original consideration, disclosed by the account books and referred to in the plaint, as an alternative basis of the plaintiff's claim. In refusing the plaintiff's application the lower court should be considered to have disposed of the proceeding started by the application for amendment. That proceeding, though it relates to the suit, is yet distinct and separable from it, such that, if all traces of it are removed from the record, the suit itself cannot be affected by it. It is quite correct to say

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that the plaintiff, who was apprehensive of his suit based on the promissory note, started, by his application for amendment, a proceeding with the object of having it determined whether he should be allowed to have in that suit, so to say, a second string to his bow. The court finally disposed of the proceeding thus started by holding that the plaintiff could not be allowed to have a second string to his bow. That episode was finally closed so far as that court was concerned. The suit proceeded as it originally stood without any reference to what had happened on the plaintiff's application for amendment. Assuming that the order of the Munsif is one which is, on the face of it, erroneous, and assuming that he failed to exercise his jurisdiction or acted illegally or with material irregularity in the exercise of his jurisdiction, and the order is one which will, in all probability, be set aside in appeal if the plaintiff's suit is dismissed, it is highly expedient that such order should be revised to avoid unnecessary delay and expense to the parties.

I agree with my learned brother in holding that the order of the lower court contravenes the provisions of order VI, rule 17 of the Civil Procedure Code. The whole of that rule is to prevent multiplicity of proceedings; and a court is, therefore, bound to allow such amendment to be made as may be necessary for the purposes of determining the real question in controversy between the parties. The real controversy between the parties is whether the amount claimed by the plaintiff was due from the defendants on account being taken between them. I fail to see why the slight change "in the frame of the suit" disentitled the plaintiff to the amendment he desired to make. In my opinion the Munsif acted illegally and, at least, with material irregularity in the exercise of his jurisdiction.

In taking the view which I have done in this case I am not acting contrary to the view expressed in *Sunder*

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Lal v. *Razia Begam* (1), in which it was held that no revision lay from an order allowing amendment of a plaint. It was not held in that case that an order allowing amendment of a plaint is not the "decision" of a "case". The ratio of that case appears to me to be that the court had jurisdiction to allow amendments and that it did not act illegally or with material irregularity in the exercise of that jurisdiction. It is true that incidentally the question whether a case was decided was referred to; but I find no definite expression of opinion on that question.

An order allowing amendment stands, in my opinion, on a different footing from one refusing to allow it. Assuming that the order allowing amendment amounts to a "decision" of a "case", it can but rarely be successfully challenged in revision, as the court cannot be said to have acted without jurisdiction or to have failed to exercise a jurisdiction or to have acted illegally or with material irregularity in the exercise of its jurisdiction. In a vast majority of cases it will be found that the court has merely acted in the exercise of its discretion which the law gives it or in obedience to the provisions of order VI, rule 17. In all such cases nothing more than a wrong exercise of discretion can be ascribed to it; but where the court refuses to allow amendments where order VI, rule 17 provides that they must be made for the purpose of finally determining the real question in controversy between the parties, the order of refusal proceeds on an illegal or irregular exercise of jurisdiction.

For the reasons explained above, I concur in the order proposed by my learned brother.

(1) [1934] A.L.J., 757.