

Before Mr. Justice Phear,

THE DELHI AND LONDON BANK v. MILLER.

1871
August 24.

Plaint. Amendment of, Substitution of Parties.

THIS was an application to amend a plaint, by substituting the names of Messrs. Latournoux Labadie for the official Assignee, as defendants. Messrs. Latournoux Labadie had been adjudicated insolvents, and one of them, Eugene Labadie, had obtained his personal discharge. As to this there was a mis-statement in the plaint, to amend which was also asked in the present application. No written statements had been filed by either party to the suit.

Mr. *Marindin*, in support of the application, referred to *Gabind Chandra Dutt v. Ganga Dhye* (1).

Mr. *Woodroffe* contra.—Parties cannot be added except under section 73 of Act VIII of 1859. No notice was given of this application. [PHEAR, J.—Is notice necessary?] There has been considerable delay in the application; the plaint was filed, in June. The amendment asked for would alter the character of the suit; it would change the liability from a general to a joint liability. The Court has no materials before it to give any information why the plaint was not brought in the form now required at first. In the case of *Gabind Chandra Dutt v. Ganga Dhye* (1), there was a petition. [PHEAR, J.—If the plaintiff wishes to put his cause of action into a more correct form, I think the Court ought to allow him to do it. But if he wants to add parties, I think he ought to afford the Court materials for judging how a mistake was made in the first place in the plaint].

Mr. *Marindin* asked, if necessary, to be allowed to put in an affidavit.

The Court took time to consider its decision, and, on a subsequent day, in answer to a question by the Court, Mr. *Marindin* stated that the cause of action had arisen prior to the insolvency of the defendants whose names it was wished to insert.

PHEAR, J.—I think the amendment should be allowed, as it does not appear that any prejudice will be done to the defendants by allowing it. In *Gabind Chandra Dutt v. Ganga Dhye* (1), there had been an adjudication of insolvency but no hearing. Here there has been a hearing, and one of the defendants has obtained his personal discharge. The costs of the amendment and all thereby incurred must be paid by the plaintiff.

In answer to a question by Mr. *Woodroffe*, the Court said that an affidavit ought to be put in for the information of the Court.