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Limitation on Right to Pleadings between the Parties: Concept of Rejoinder and Surrejoinder

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ABSTRACT

This article encompasses the common-law system of pleadings which contemplated successive pleadings in modification by each party until an issue was reached; which was assumed affirmative by one party and negative by another party. This process was to be in accordance, no matter what time was thus consumed. Under the code system of pleading, however, the objective is not so much to attain a narrow issue, but to have each party's view of the facts on record as succinctly and as quickly as possible. This distinction in resolution led to a striking contrast in attitude with regard to the reply to the answer under the two systems. At common law, the duplication was an essential part of the social stratum of pleadings whenever the plea consisted of matter avoidance and confession, i.e., new matter. It was, however, one of a sequence of pleadings and is developed in turn by the rejoinder, the surrejoinder, the rebutter, the surrebutter and further pleadings, as necessary. On the other hand, the scheme of the code was to delete the pleadings quite sharply at the reply or before. The plaintiff might reply to a new matter, as per the original code; but under several modern codes the reply either is unavailable or is available only in a restricted class of cases. The result is that the issue is more quickly interpreted under the codes, but is broader and a more general one in all probability.

Keywords: *Rejoinder, Surrejoinder, Code of Civil Procedure*

I. INTRODUCTION

The "Amendment of pleadings" is stated under Order VI, Rule 17 of the Code of Civil Procedure. The provision recites that a court may allow the amendment of the proceedings to any party at any stage if it considers that to be fair. All such amendments which are paramount for the purpose of directing the real questions in dispute between the parties shall be announced by the court. Striking out of the pleadings is provided under Rule 16 of the same Order and was also put through to the amendment in the year 1976. It submits that the Court may at any phase of the proceedings order to amend or withdraw any part of the

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pleading which is frivolous, unnecessary, vexatious or scandalous etc. The Court may also alter at any stage, any matter that delays the just trial or disregards the process of the court.

Pleadings of Rejoinder and a Surrejoinder have their own limitations. As to mention, A quick reply that is often witty or sharp, or is a legal term stating a defendant's answer to a plaintiff's legal action is referred to as a Rejoinder . For instance, A fast, witty comeback to an insult. The rejoinder allows a respondent to set forth a more specific and responsive statement questioning the allegations made against him/her by the plaintiff. A plaintiff's reply to the respondent's rejoinder is a surrejoinder.

One outlook to pleading problems is by an exhaustive examination of the methods of handling an exclusive topic such as the statute of limitations, contributory negligence or payment. While conclusions as to one of these may not be incontrovertible, the outcome may be suggestive as to procedure generally. As per time limitations, as with several other matters, litigants may object as to the facts, or as to the rules of law, or possibly both. One instantly thinks of two points of possible distinction as to the facts, viz., the time when the action occurred and the date of the commencement and finalization of suit.[2] Serious factual disputes sometimes arise with reference to certain exceptions which save the statute from implementation, such as disability of the petitioner or absence from the jurisdiction and concealment on the part of the respondent.[3] It is much more likely that the parties will have distinction as to rules of law. Thus, there are several legal queries as per the exceptions which prevent the law from running.[4]

II. PLEADINGS: PROBLEMS AND PROSPECTS

Frequently, the problem is simply to discover which party has the burden of proof.[5] In most cases this becomes essential, as the court is asked to instruct the jury that the risk of non-

[2] Here the question of failure of proof is probably more frequent than actual dispute, e. g., Murrell v. Goodwill, 159 La. 1057, 106 So. 564 (1925) ; cf. McNeil v. Garland & Nash, 27 Ark. 343 (1871). There may be a jury question in the jurisdictions in which prompt delivery of the summons to the sheriff is necessary. Godshalk v. Martin, 200 S. W. 535 (Tex. Civ. App. 1918); Michigan Ins. Bank v. Eldred, 130 U. S. 693, 9 Sup. Ct. 690 (1889).

[3] This is particularly true in the question of fraudulent concealment. Laster v. Cox, 120 Kan. 452, 243 Pac. 1052 (1926).

[4] Murphy v. Graves, 170 Ark. 180, 279 S. W. 359 (1926); Inland Steel Co. v. Jelenovic, 150 N. E. 391 (Ind. App. 1926); Pullan v. Struthers, 207 N. W: 235 (Iowa, 1926); Walker v. Bennett, 209 Ky. 675, 273 S. W. 548 (1925).

[5] The recognition of several diverse situations clarify the matter considerably, although even if there is some disagreement. When the problem is one of adverse possession, the burden is generally placed upon the party who attempts to make out title by this means. Brown v. King, 5 Metc. 173 (Mass. 1842); Johns v. Johns, 244 Pa. 48, 90 Atl. 535 (1914); Jansen v. Huerth, 143 Wis. 363, 127 N. W. 945 (1910); Brandt v. Ogden, 1 Johns. 156 (N. Y. Sup. Ct. 1806).

persuasion is on one party or the other.[6] The decision of the jury would generally be the same as per its discretion regardless of what the court tells the jury as to the burden of proof.

One of the most usual complications with reference to the statute of limitations seems to be merely whether the respondent has taken the proper procedural steps to authorize him to object on the ground of the statute.[7] The cases reported may not be entirely indisputable as to the sort of questions which are ordinarily introduced in trial courts, but it is apparent that most conflicts amongst the parties with reference to time limitations must be over rules of procedure and substantive law and are not distinction of fact. Comparatively, rarely is there anything for a jury to decide. In spite of this fact the traditional plea of the statute of limitations was perceptibly designed to solve the matter as a proper one for the determination of the jury. All the elusiveness of confession and avoidance were thrust upon the plea, with little or no attention to the species of problems raised at the trial.

Of course, the purely reasonable and legitimate attitude cannot be left unnoticed entirely. In the interest of lucidity, it seems desirable to mention the facts consisting the cause of action in the proclamation of complaint and to raise issues on these facts by contradiction or to plead specially additional facts which are consistent with those stated by the petitioner. But too much dependence has been placed upon this so-called reasonable feature of our pleading.

Progress and efficiency are more significant to result from considerable emphasis upon framing our procedural rules so that:

1. The disputed points may be settled in advance of trial whenever possible;
2. Opponents should be given sufficient notice[8];
3. The burden of pleading and certain sorts of facts may be governed by ideas as to whether those elements should be undesired.

III. STATUTE OF LIMITATION

The notion of amendment of pleadings can be detected back to the decision of the Privy Council in the case of *Ma Shwe Mya vs. Maung Mo Huang*.[9]

(A) LEAVE TO AMEND WHEN GRANTED:

[6] Nepean v. Doe d. Knight, 2 1. & W. 894 (Ex. Ch. 1837); Davie v. Briggs, 97 U. S. 628 (1873).
[7] The defense of the statute of limitations must be asserted in some manner by the pleadings or is deemed waived. Brownrigg v. De Frees, 1906 Calif. 534, 238 Pac. 714 (1925); Brazell v. Hearn, 33 Ga. App. 606, 127 S. E. 479 (1925); Citizens-First Nat'l Bank v. Whiting, 112 0kla. 221, 240 Pac. 641 (1925) ; Selles v. Pagan, 8 Fed. (2d) 39 (C. C. A. 1st, (1925) ; cf. Wulfsohn v. Russo-Asiatic Bank, 11 Fed. (2d) 715 (C. C. A. 9th, 192G).
[8] Whittier, Notice Pleading (1918) 31 IHA. L. Ruv. 501.
[9] AIR 1922 PC 249.

The basic rule is that the leave to amend will be granted so as to facilitate the real question on issue amongst the parties to be raised in the pleadings, where the amendment does not result in any loss to the contradictory party.[10] Generally, the courts assist the leave to amend the proceedings if such allowance helps the court to come up with the real matter in controversy.[11] The amendment can be simply denied when it is unnecessary to determine the real question in controversy.[12]

(B) INTRODUCING NEW AND DIFFERENT CASE:

The application to amend will be denied if that claims to introduce specific and different cases, as in the case of *Steward vs. North Metropolitan Tramways Company*.[13] This case laid down the rule that if the amendment of an expressed statement wholly replaces the status of the petitioner, then the amendment should not be granted.

(C) TAKING AWAY THE RIGHT ACCRUED TO THE OPPONENT BY LAPSE OF TIME:

In the case of *K. Venkateswara Rao vs. B.N. Reddi*[14], The Supreme Court held that the courts have wide discretionary powers to revise the plaint under Order XI Rule 17, but those powers are susceptible to the Law of Limitation. Material and important facts must be incorporated in the pleadings based on which the Court proceeds ahead to determine the suit. But, most of the time, the parties find it troublesome not to amend the pleadings. They seek to quote new evidence, to add fresh information, which are exclusively congregated by them. It might be a case where one party must revise the pleadings in view of the documents revealed by the counter party, thus chiseling his defense or claim.[15] The proceedings cannot be amended if the party institutes a new case or launches new evidence and if the court feels that the amendment leads to unnecessary complications. The court may withdraw to allow the amendment if it feels that the party had numerous opportunities and had slept over his rights. The amendment in a pleading cannot be professed as a matter of right.[16]

(D) INTERPRETING AT ANY STAGE OF PROCEEDINGS:

The courts can revise the proceedings at their own discretion as per Order VI, Rule 17 "at any stage of the proceedings" which simply signifies that the amendment applications are not governed by the law of limitations and can be observed in the case of *Narayana Pillai vs.*

[10] Tildersay vs. Harper, (1878) 10 Ch D 393.
[11] Suraj Prakash vs. Raj Rani, AIR 1981 SC 485.
[12] Edwian vs. Cohen, (1889) 43 Ch D 187.
[13] (1886) 16 QB 178.
[14] AIR 1969 SC 872.
[15] Weldon vs. Neal, (1880) 19 QBD 394; Charan Das vs. Amir Khan, AIR 1921 PC 50; Kishan Das vs. Rachappa, 4 Ind Cas 726; Shiv Gopal Das vs. Sita Ram Sarongi, AIR 2007 SC 1478.
[16] Kanda vs. Waghu, AIR 1950 PC 68.

Parameswaran Pillai[17]. The object of implementing such a clause is to serve the ends of justice by determining and resolving the exact controversy between the parties.

(E) PRE-TRIAL AND POST-TRIAL AMENDMENTS:

Pre-trial amendments are more liberally acknowledged than the Post-trial amendments. The reason is that in the formal cases, it is assumed that no preconceived notion should be made in regard with the opposite party as he has full possibility of enduring the case put forward by his opponent. The doubt of prejudice may arise and must be dealt carefully.[18]

(F) DOCTRINE OF RELATION BACK:

If a revision is incorporated in a pleading, the Court has the power to administer appropriate cases that such a particular amendment does not concern the date of the institution of the suit in the interest of justice. This was declared by The Supreme Court in the case of *Sampath Kumar vs. Ayyakannu*.[19]

(G) AMENDMENT TO WRITTEN STATEMENTS:

The postulates that apply to amendments of pleadings also apply to the written statements.[20]The Supreme Court in the case of *Usha Balasahed Swami vs. Kiran Appaso Swami*[21] held that the courts should be more flexible in granting the applications for the revision of the written statements that in the case of plaintiff's are questions of prejudice.

IV. CONCLUSION

The law of amendment of pleadings is settled by The Apex Court. The Courts started with the rule of law, that there must not be any limitations on the power of the courts, be it Law of Limitation or after the inception of the proceeding, for obtaining the ends of justice and to curtail the harm caused to the opposite party.

The Courts have been very operative in this sphere, flourishing the law time to time and again to suit the various time frames. However, the legislators gave it a thought that discretion should be permitted to the courts whether to allow the revision or not and to decide the significance of an issue.

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[17] AIR 2000 SC 614.
[18] Kanakarthanakamal vs. Loganatha, AIR 1965 SC 271.
[19] AIR 2002 SC 3369.
[20] Gautam Swarop vs Leela S. Jetley, AIR 2009 SC (supp) 363.
[21] AIR 2007 SC 1663.