1896.
July 9 and 14.

RATWATTE *v.* OWEN.

D. C., Kandy, 10,263.

Amendment of pleadings—Principle by which Courts ought to be guided—Discretion of the Court as to amendment—Alteration of plaint not followed by alteration of answer—Settling of issues—Civil Procedure Code, s. 93.

Parties to a suit have no right to amend the pleadings : it is to the Court that discretion is given by section 93 of the Civil Procedure Code ; and although, ordinarily, the Supreme Court would not interfere to control such discretion, yet where it appeared that the District Judge had made alterations in a plaint, but omitted to alter the answer to meet the altered plaint, and thus made the question at issue between the parties more obscure, the Supreme Court set aside the order amending the plaint and remitted the case to the Court below to settle the issues, and then to make the amendment in the pleadings so as to harmonise them with the issues framed.

Per LAWRIE, J.—The principle by which a Court ought to be guided in deciding to alter a pleading is that the alteration will make the real issues clear.

Per WITHERS, J.—After a plaint has once been accepted, it should not, as a general rule, be amended until after the issues have been settled. The office of an amendment will generally at that stage be to square the plaint with the issues framed.

THE facts of the case appear in the judgments.

Dornhorst, for appellant.

Sampayo, for respondent.

Cur. adv. vult.

1896.
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14th July, 1896. LAWRIE, J.—

In the ordinary course this Court will not interfere to control the discretion given by the 93rd section to Courts of first instance to amend "all pleadings and processes in the action by way of "addition or of alteration or of omission." The principle by which a Court ought to be guided in deciding to alter a pleading is that the alteration will make the real issues clear.

Here the Court deleted a paragraph in the prayer. The Court did not consider (as I think it was bound to do) what alterations were then necessary in the answer. Unless the answer was amended the alteration made by the Court was not an amendment, because it touched only one of the pleadings and made the question in issue between the parties more obscure. No doubt the learned District Judge said that the defendant "is to make such amendment of his "answer as he may be advised, on or before a certain day," but that is precisely what the Code does not contemplate nor allow; the parties have no right to amend; it is to the Court that the discretion is given, in the confidence that no alteration which is not an amendment will be allowed.

Here the District Judge devolved on the defendant a power which the Code gives to him alone.

I cannot approve of the alterations made by the District Judge, because these left the record worse than it was, and because it devolved on others the task of making further alterations. I would not interfere with the order amending, however great were the changes, provided that then and there the Judge had by alterations, additions, or omissions brought out clearly and fully the meaning of both parties, and had so made the settlement of issues an easy task. I would interfere with partial changes which unsettle the pleadings and leave the settlement to be made afterwards, not by the Court, but by one of the parties.

I agree to set aside the order allowing the amendment, and I recommend that the record be sent with instructions to the District Judge to call parties before him for the settlement of issues, then to make such alterations in the pleadings as may best bring out the real questions in dispute.

WITHERS, J.—

I must say, I think, that the District Judge should not have allowed this amendment. In the first place it was premature, and in the second place it does not make this obscure plaint a whit clearer.

After a plaint has once been accepted, I think as a general rule that it should not be amended till after the issue has been settled. The office of an amendment will generally at that stage be to square the plaint with the issue, if necessary.

A plaint as a rule should not be accepted unless it is plain. The office of an amendment at that early stage is to bring a plaint into line with the Code and to make it plain. Chapter VI. of the Procedure Code relates to the framework and scope of an action; chapter VII. prescribes how the plaint shall be filled in. Section 46 leaves it to the discretion of the Judge to refuse to entertain a plaint which is defective in any of the ways pointed out from (*a*) to (*f*) of that section and to return it for amendment, provided that no amendment shall be allowed which would have the effect of converting an action of one character into an action of another and inconsistent. I do not hesitate to say that as a general rule a plaint which offends against section 46 should not be entertained, but should be then and there amended or returned for amendment, as the case may be.

How this plaint came to be entertained I am at a loss to understand, for I never read a more obscure pleading. I would declare that the amendment should be treated as if not made. The plaint will thus stand as it is. I would remit the case for the Court to appoint a day for the hearing. On that day the issues will be settled by agreement of parties, or by the Court on the material before it, on documents produced, and examination of parties if necessary.

The plaint can then be confined to the issue by amendment, if that is fair and right. I would give no costs.