

1936

*Present : Abrahams C.J. and Soertsz A.J.*

VELLUPILLAI *v.* THE CHAIRMAN, URBAN  
DISTRICT COUNCIL.

56—D. C. (Inty.) Jaffna, 7,327.

*Action—Wrong person named as defendant—Substitution of right defendant—  
Amendment of caption.*

Where the plaintiff, who had a cause of action against an Urban District Council, by a mistake named the Chairman of the Council as the defendant in the plaint and where, at the trial, an issue was raised that the action had not been properly constituted,—

*Held*, that the plaintiff should be allowed to amend the caption by substituting the Council in place of the Chairman.

**A**PPEAL from an order of the District Judge of Jaffna.

*S. Subramaniam* for plaintiff, appellant.

*N. Nadarajah* (with him *B. Kumarakulasinghe*), for defendant, respondent.

*Cur. adv. vult.*

September 28, 1936. ABRAHAMS C.J.—

In this case the plaintiff had a cause of action against the Urban District Council, Jaffna. He or I should say his proctor seems to have been under the impression that he could not sue the Council direct but would have to do so by naming the Chairman of the Council as the defendant. Under section 10 of the Local Government Ordinance an Urban District Council can be sued in its own name. There is no doubt by the wording of the plaint itself that the plaintiff was under the impression that his cause of action was against the Urban District Council itself for he continually mentions the defendant Council and prays for judgment against the

defendant Council for Rs. 10,000. The answer of the defendant also appears to me to indicate that he too knew very well that the plaintiff intended to bring his action against the Council and not against him personally, and although in paragraph 9, he denies that the plaintiff has any cause of action to sue the defendant, that seems to me to be distinctly ambiguous and does not create the impression that he meant to convey that he himself was not liable to be sued.

When the parties came to trial the preliminary issue was raised on behalf of the defendant that the action against the Chairman was not properly instituted. The learned District Judge allowed that issue. The proctor for the plaintiff moved to amend the caption. The learned District Judge said that the caption if amended would not remedy the position, which could only be remedied by substituting or adding a different party, who would then be entitled to plead all defences, including prescription since at that stage time would have run against the plaintiff so as to constitute the defence of prescription by the Council. The learned District Judge refused to grant any time for the purpose of substituting a different party, proceeded to trial and gave judgment by dismissing the plaintiff's action with costs.

There is no doubt in my mind that the plaintiff intended to sue the Urban District Council and this case bears a very close resemblance to the case of *Lord Bolinbroke v. Townsend*<sup>1</sup>, where an amendment of this nature was allowed. There is a slight distinction between the facts because in that case the amendment was applied for before the parties went to trial but, in my opinion, that is a distinction without a difference.

It is argued by Mr. Nadarajah for the respondent that if we allow this amendment we should be in fact depriving the defendant Council, as it would then be, of the defence of prescription and we have had cited to us the case of *Weldon v. Neal*<sup>2</sup>, where Lord Esher M.R. held that if an amendment were allowed in the pleadings the defendant's right to plead the Statute of Limitations would be taken away, which would have been in the opinion of the learned Master of the Rolls, improper and unjust. That case is different from this in that it was sought to amend the pleadings by instituting a fresh cause of action which was outside the period of limitation.

I think that if we do not allow the amendment in this case we should be doing a very grave injustice to the plaintiff. It would appear as if the shortcomings of his legal adviser, the peculiarities of law and procedure, and the congestion in the Courts have all combined to deprive him of his cause of action and I for one refuse to be a party to such an outrage upon justice. This is a Court of Justice, it is not an Academy of Law.

I would allow the amendment, but obviously the plaintiff should be mulcted in costs. He will pay the defendant the costs of the day's hearing and also the costs of the proxy and answer filed by the defendant. We make no order as to costs of the appeal.

SOERTSZ A.J.—I agree.

*Appeal allowed.*

<sup>1</sup> 29 *Law Times* 430.

<sup>2</sup> 19 *Q. B. D.* 394.