

CPC, 1908, O. 6 R. 17, O. 30 R. 1 - Amendment of plaint - Suit for recovery of money based on a promissory note was filed by a firm through a partner - Partnership firm / plaintiff stood dissolved on the date of filing the suit - Suit was instituted by one of the erstwhile partners - Amendment could not be refused as it does not alter the cause of action - It only brings out correctly the capacity of the plaintiff suing - It does not change the identity of the plaintiff who remains the same.

CPC, 1908, O. 6 R. 17 - Principles - Provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them - Even if party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions - The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued.

CPC, 1908, O. 6 R. 17 - Cause of action - Mere failure to set out even an essential fact does not, by itself constitute a new cause of action. - It is true that, if a plaintiff seeks to alter the cause of action itself and to introduce indirectly, through an amendment of his pleadings, an entirely new or inconsistent cause of action, amounting virtually to the substitution of a new plaint or a new cause of action in place of what was originally there - Court will refuse to permit it if it amounts to depriving the party against which a suit is pending of any right which may have accrued in its favour due to lapse of time - But, mere failure to set out even an essential fact does not, by itself constitute a new cause of action - A cause of action is constituted by the whole bundle of essential facts which the plaintiff must prove before he can succeed in his suit. It must be antecedent to the institution of the suit - If any essential fact is lacking from averments in the plaint the cause of action will be defective - In that case, an attempt to supply the omission has been and could sometime be viewed as equivalent to an introduction of a new cause of action which, cured of its shortcomings, has really become a good cause of action. This, however, is not the only possible interpretation to be put on every defective state of pleadings. Defective pleadings are generally curable if the cause of action sought to be brought out was not ab initio completely absent. Even very defective pleadings may be permitted to be cured, so as to constitute a cause of action where there was none, provided necessary conditions, such as payment of either any additional court fees, which may be payable, or, of costs of the other side are complied with. It is only if lapse of time has barred the remedy on a newly constituted cause of action that the Courts should, ordinarily, refuse prayers for amendment of pleadings.

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