

an order and can deal with the matter in controversy so far as regards the rights and interests of the party before it. (Rule 206(1).) See *Robinson v. Geisel* (1894) 2 Q.B. 685; *Roberts v. Holland* (1893) 1 Q.B. 665; *Norris v. Beasley*, 2 C. & P. 80; *Ladue v. Ward*, 54 L.T.N.S. 214; *Kendall v. Hamilton*, 4 A.C. 504.

4. Notwithstanding the difference between the wording of our Rule 206 (1) and that of the English Order 16, R. 11 (the former omitting the words "or non-joinder" which appear in the English Rule), it is clear, upon the English authorities, that under our Rule mis-joinder must be deemed to include non-joinder, so that the authorities upon the English Rule are applicable, and therefore it is now discretionary with the court to proceed with the action in the absence of the party which the defendants claim ought to be before it.

5. The plaintiffs having done all in their power to bring the Commission as a defendant before the court, and the latter having refused to consent to be joined, it is in the position of a party outside the jurisdiction of the court, and although co-contractors are as a general rule regarded as parties who should be joined, yet a defendant cannot get a stay of proceedings under such circumstances, unless he can shew that the party to be added is within the jurisdiction of the court, and that he can be brought before it.

6. Assuming the validity of the statute declaring that no action shall be brought against the Commission without the fiat of the Attorney-General (the constitutionality of which was denied by the plaintiffs) it could never have been intended that the non-joinder of the Commission should be fatal to the action, for, if the plaintiffs are not allowed to proceed with their actions without joining the Commission as a defendant, whatever rights they may have against the present defendants would be denied them; and especially is this so when by leaving the matter open to be dealt with at the trials, the important questions involved in these actions might be carried on appeal to the Supreme Court or to the Judicial Committee of the Privy Council.

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