

The question before me is of amendment before trial. Issue has been joined upon the claim presented by plaintiff's original statement of claim, and unless plaintiff chooses to abandon that claim there must be a trial. The parties have been examined at very considerable length and upon the case which plaintiff desires to present by the amendment asked. A great deal of expense will be saved by having the whole matter tried out in the present action, instead of compelling plaintiff to start afresh. Indeed, after reading the depositions, I feel compelled to make the amendment asked, as it is necessary for "the advancement of justice, determining the real matter in dispute, and best calculated to secure the giving of judgment according to the very right and justice of the case."

What is asked by the amendment is a matter in dispute; it was so when the interim injunction was obtained; it was so when the examination of plaintiff and defendants took place. Defendants in the examination appear to me to have proceeded upon the theory that plaintiff was not limited to the precise claim as in the statement of claim. . . .

[Reference to *Raleigh v. Goschen*, [1898] 1 Ch. 73.]

The other case strongly relied upon by defendants is *Hendricks v. Montagu*, 17 Ch. D. 638, in which Jessel, M.R., stated his rule to be not to allow any amendment in which fraud is charged. That rule was stated as a general rule, but the Master of the Rolls said: "I do not as a rule allow amendments to make a charge of fraud at a time when a case is launched independently of fraud. . . . Of course, like all my rules, it is not an absolute rule. I make an exception to it if I see good ground for doing so, but generally it is my rule."

I follow this. It clearly states the position. This, in my opinion, is a case for the exception. There is good ground for allowing at this stage the amendment asked.

A further rule was laid down by Lord Esher in *Steward v. North Metropolitan Tramways Co.*, 16 Q. B. D. 556: "The amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs; but if the amendment will put them into such a position that they would be injured, it ought not to be made." See *Williams v. Leonard*, 16 P. R. at p. 549.