

(1877) 07 CAL CK 0008

Calcutta High Court

Case No: None

Koegler

APPELLANT

Vs

Prosonno Coomar
Chatterjee

RESPONDENT

Date of Decision: July 19, 1877

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 73

Citation: (1877) ILR (Cal) 472

Hon'ble Judges: Kennedy, J

Bench: Single Bench

Judgement

Kennedy, J.

I have not been referred to any authority which shows me that the old practice with respect to the addition of parties to a suit has been retained. The CPC seems to have been introduced by the rules of this Court as laying down the entire practice. Section 73 of that Code is the only section which provides for adding parties, and by that section parties can only be added where they "may be entitled to, or claim some share or interest in the subject-matter of the suit, and may be likely to be affected by the result." Probably the framers of the Act had in their minds suits for land. I do not think, therefore, that a person who is not entitled to, and who does not claim, any interest in the subject-matter of a suit can be made a party to it. By the old practice any number of persons who were necessary parties were considered as being parties having an interest in the matter of the suit, except in matters of contract. Under the Contract Act the distinction between joint and several contracts in respect of pleading has been abolished, and one party of any number, unless there be an express contract to the contrary, may be sued alone. In this case if the plaintiff can make out a partnership between the defendant and the person he wishes to have made a party, he will be able to recover against the person he has sued. If the person he has sued is only an agent, then the plaintiff having elected to sue the

agent has no right to be allowed to join another person as principal; that would be a different suit. I must therefore refuse this application. I cannot see any reason why the original defendant should have appeared in this application, therefore he will get no costs. The other party who has opposed it must have his costs.