

Oriental Government Security Life Assurance Co., Ltd. Vs Oriental Assurance Co., Ltd.

Court: Calcutta High Court

Date of Decision: Feb. 17, 1913

Acts Referred: Provident Insurance Societies Act, 1912 " Section 5, 6

Citation: (1913) ILR (Cal) 570

Hon'ble Judges: Fletcher, J

Bench: Single Bench

Judgement

Fletcher, J.

This is a Rule obtained by the plaintiff company, the Oriental Government Security Life Assurance Co., Ltd., against the defendants, the Oriental Assurance Co., Ltd., asking that an injunction may be granted against the defendants, restraining them, their servants and

agents, until the final determination of this suit, from carrying on business under the name of the Oriental Assurance Co., Ltd., or any other name,

likely to mislead or deceive the public into the belief that the defendant company is the same as the plaintiff company, and from using the name "The

Oriental Assurance Co., Ltd.", or any such other name as aforesaid, and from inviting and receiving applications for the shares, and from inviting or

issuing policies, and from receiving monies under the name of the Oriental Life Assurance Co., Ltd., or any such other name as aforesaid.

2. Now, the plaintiff company is an old well-established firm, whose head office is in Bombay, but which has a branch office in Calcutta, and for

many years past has carried on business both in Bombay and in Calcutta. The defendant company was incorporated on the 14th November,

1912, under the provisions of the Indian Companies Act with a share-capital of Rs. 20,000, divided into 2,000 shares of Rs. 10 each, and the

objects for which this company was established are, amongst other objects, to carry on all forms of life, marriage, birth, education, fire, marine,

accident, transit and other sorts of insurance business and work connected therewith or likely to promote the same. It has also power to grant

annuities, and issue guarantee and indemnity policies. These are very wide powers, as wide as any insurance company could, possibly want, and

the share-capital with which this defendant company is going to carry on this large and important business is the sum of Rs. 20,000, divided into

2,000 shares of Rs. 10 each. How many shares have, in fact, been subscribed for, out of these 2,000 shares, and how much of this Rs. 20,000

has been paid up in cash, I do not know. Now, no one has any information as to whether the whole of Rs. 20,000 or a small portion of the amount

has been paid for. In order to carry on a life assurance company, that is a life assurance business, or the undertaking of liability under policies of

insurance in respect of human lives, it is provided by Act VI of 1912 (Indian Life Assurance Companies Act, 1912), that an amount which would

be in excess of the whole of the capital of this company has to be deposited in Government securities with the Governor-General in Council. So on

the thresh hold of its existence this company would have to make a deposit of Rs. 25,000, that is in excess of the whole of its capital, if subscribed

and paid for, with the Governor-General in Council, before it had authority to do business in accordance with the terms of its memorandum of

association. It was noticed by the persons who assisted in giving birth to this company that there were certain exceptions to the provisions of the

Indian Life Assurance Companies Act of 1912, and one of the exceptions was that nothing in the Act was applicable to any societies to which the

Provident Assurance Societies Act of 1912 applies. That was an Act which was passed immediately prior to the Indian Life Insurance Companies

Act, but received the assent of the Governor-General on the same day as the Life Assurance Companies Act; both received the assent of the

Governor-General on the 18th March 1912. So having found out apparently that provident societies were exempted from the provisions of the

Indian Life Assurance Act, the promoters of this company apparently turned back to the Provident Assurance Societies Act, and there found

another exception, that nothing in that Act was to apply to societies which undertook to pay on any life policy an annuity not exceeding Rs. 50 or a

gross sum not exceeding Rs. 500. They considered that by issuing policies not exceeding Rs. 500 they could bring themselves under the heading of

a Provident Insurance Company and were entitled to carry on business untrammelled by the provisions of the law. That is not so, because under

the Provident Insurance Societies Act the registration is to be made subject to certain conditions, which are set out in the Act, and which have to

be approved of by the Registrar, and these provisions do not apply to a company which has a share-capital divided into shares. This is provided

by Sections 5 and 6 of the Provident Insurance Societies Act, 1912, and it is quite obvious to anybody looking at the form of the policy which this

company has issued that they have simply been trying to avoid the provisions of the Indian Life Assurance Companies Act of 1912, which were

intended to prevent a company from embarking in the business of life insurance, unless and until they had the amount of cash that was necessary for

them to deposit with the Governor-General in Council in order to meet their obligations. Now, the policies of this company are obviously life

assurance policies, because they undertake the risk on human lives, and it does not matter whether they run for a term of 15 years or whether they

are terminable by death, it is obviously a life assurance business. The plaintiff, company is a life assurance company doing all classes of life

business. The plaintiff company is a company with an old established business, and with a reputation which, of course, if the defendant company

can take a name which will lead the public to believe that it is the plaintiff company, it is a not unfavourable asset for the defendant company to

commence their business with. Probably the right to use the words "'Oriental Assurance Company'" is worth more than the Rs. 20,000 capital

which the defendant company has. What are the grounds on which this company say they are entitled to use the words "'Oriental Assurance

Company'"? First of all they say their company is situated in the Orient. I dare say that is so. Then, if that be so, every company in India already

established now or hereafter may describe itself as "'Oriental'", because it is doing business in the Orient. That seems to be absurd. In *Hendricks v.*

Monlagu (1) (1881) L. R. 17 Ch. D. 638. a company was held not entitled to use the name "'Universe.'" Of course, so far as every life insurance

company is concerned, it must do business in the Universe; similarly every life insurance company in India must do business in the Orient. It seems

to me that any argument that, because you are doing business in the Orient, you are entitled to call yourselves "'Oriental,'" without reference to what

may be the rights of others, is not well-founded. There is a class of case, as the *Rugby Portland Cement Company, Ltd. v. Rugby and Newbold*

Portland Cement Company Ltd. (1) (1891) 8 R. P. C. 241: (C. A.) 9 R. P. O. 46. where the word "'Rugby'" was held to be a geographical definition

of the place from where the goods had come. That is a totally different case to a case where you call yourselves an Oriental company, which

includes the whole of Asia. The word "'Oriental'" is a much wider term than the word "'Rugby'". That being so, on what grounds does this company

say that they are entitled to carry on this Oriental Assurance Company. They say, first of all, at present, that their business is of such a small nature

that they cannot possibly affect the business of the plaintiff company. That may be so for the present; until they can obtain their Rs. 25,000 to

deposit with the Governor-General under the terms of the Life Assurance Act they are not entitled to issue any policies exceeding Rs. 500, but this

company, if it exists, must be a source of danger to the plaintiff company. At any time, if they can obtain from any source the sum of Rs. 25,000 to

deposit with the Governor-General under the Life Assurance Act, the defendant company would be able under the terms of its memorandum of

association to blossom out into a fully blown life assurance company and compete with the plaintiff company, and with a name so similar that

people would be likely to consider that the defendant company was in fact the plaintiff company. That is a risk which I think the plaintiff company

ought not to be liable to. The defendant company says it has an Oriental origin or existence, and for that reason they are using the word "Oriental."

There are heaps of other words, if they wish to show that it is of an Indian origin, and one cannot say why the words "Oriental Assurance

Company" have been hit upon, except that there is a well-known and well-established business which has gained the confidence of the people of

this country, and the defendant company hope that that reputation would descend to them under the title of the Oriental Assurance Company.

3. It seems to me in this case, notwithstanding the cases that have been cited by Mr. Mitter and his learned junior, that an injunction ought to be

granted. No doubt there are cases where injunctions have not been granted, but there are other cases where, the company being an insurance

company, injunctions have been granted, as the case of Merchant Banking Company of London v. Merchants' Joint Stock Bank (1) (1878) L. R.

9 Ch. D. 560. There is the case of Accident Insurance Company, Limited v. The Accident, Disease and General Insurance Corporation Ltd. (2)

(1884) 54 L. J. Ch. 104. There is also a case of Guardian Fire and Life Assurance Company Ltd. v. Guardian and General Insurance Company

Ld. (3) (1880) 50 L. J. Ch. 253. Both these cases are cases where a portion of the title of a well-known insurance company was taken by a new

company, and there cannot be much doubt why those names were taken. It seems to me in this present case that this small company, brought into

existence in this way, and starting this business in this manner, to avoid responsibility that was cast upon it by law before it can commence business

contemplated in the articles of association, is liable to deceive people that it is the old and well-established company. It is said that people make a

very careful examination into the affairs of the life insurance companies before they insure their lives. That may be so with reference to some cases.

In the case of companies like the Law Life and the Equity and Law Life, which appeal to a certain class of persons, viz., the members of the legal

profession, persons intending to assure probably investigate more carefully into the affairs of the companies than the class of people to whom the

Oriental Assurance Company would appeal, and who take Re. 1 per month for a period of fifteen years from the persons taking out policies. They

must obviously be Indians in more or less humble positions, at any rate not of a highly educated class, probably men in the ordinary walks in life,

and who probably do not know the meaning of the word "Oriental," but who, knowing that there is a well-established office in Calcutta of the

plaintiff company, might be liable to think that this new form of policy was being issued by the plaintiff company. It seems to me that, taking, into

consideration also the risk that there is of this company blossoming out as a full grown life assurance company, issuing life policies to any amount,

the plain tiffs are right in thinking that there is a real danger of their suffering irreparable loss if this company is not restrained by an injunction.

4. Then the other point made by Mr. Mitter is that this small company is carrying on business at No. 20, Cornwallis Street, and that nobody is

likely to think that this small company, in No. 20, Cornwallis Street, is likely to be the old and Well-established concern in Dalhousie Square. So

far as that goes, the Oriental Assurance, Company, that is, the defendant company, on its policies very carefully conceals its address, and it gives

no address at all, but dresses up the matter in this way. At one corner of the policy there is a blank for the number, and at another corner the word

Agency", as if this company of No. 20, Cornwallis Street has several agencies throughout British India, obviously intending the public to think that

it was a big company with several agencies. It is quite obvious that the defendant company carrying on business in this way is liable to cause

damage to the plaintiff company. It seems to-me, so far as I can see, that the word "Oriental" has become identified, when applied to a life

assurance company, with the plaintiff company, which has now been in existence for many years, and they are now known as the "Oriental Office.

In the circumstances. I think the present rule ought to be made absolute, and the defendant company restrained from using the name "Oriental" until

the trial of the suit. There is nothing to prevent the defendant company from applying to the Registrar of Joint Stock Companies to alter its name,

so that it may show that it is a company of an Indian origin carrying on a sort of life assurance business; but, as I have already said, the business

carried on by the defendant company is illegal, and not in accordance with Acts V and VI of 1912. In my opinion it ought to make a deposit of Rs.

25,000 with the Governor-General, under Act VI of 1912, before it can issue the policies that it is now issuing. On these grounds the present rule

should be made absolute, and the defendant company restrained until the trial of the action from using the words
""Oriental Assurance Company.

Costs of the present application to be made costs in the suit, and the plaintiff company must give an undertaking as to damages.