THE PRACTICE IN REVERSING JUDGMENTS *N. O. V.*, AND IN AMENDING THE PLEADINGS IN PENNSYLVANIA.*

I. Reversal of Judgments.

A very interesting situation arises when the winning party in the court below loses in the appellate court, and then wishes to take his own appeal after the judgment which had been entered in his favor in the court below is thus reversed.

Suppose, for instance, there is a verdict for the plaintiff and the court subsequently enters judgment for the defendant, *non obstante veredicto*. The plaintiff then appeals, and the appellate court reverses this judgment and enters judgment on the verdict in favor of the plaintiff. The defendant may have taken certain exceptions during the trial, which, of course, were not considered on the appeal, but he has had no chance to have these rulings passed upon by the higher court because the judgment originally entered below was in his favor, and he now wishes to make his exceptions the basis of an appeal. Since the Act of 1897,[1] the unsuccessful party has had only six months in which to take an appeal, and by the time the higher court has handed down its decision, more than six months have usually elapsed since the trial closed.

This question has been before our appellate courts in only four cases. In all of them the point considered seems to have been whether the winning party after losing upon the appeal would be too late to enter his own appeal from the judgment.

The first case after the Act of 1897 [1] was that of Hughes v. Miller, 192 Pa. 365 (1899). At the trial Miller presented two defenses, one on the facts, and one on the law. The court ruled against him on the facts and directed a verdict for the

*This is the third of a series of articles on Pennsylvania Law. The first was by H. B. Patton, Vol. 58, page 347. The second by Roland B. Foulke, Vol. 58, page 445. [Ed.]

[1] Act of May 19, 1897, P. L. 68 (Pa.).

plaintiff, giving the defendant exceptions. Subsequently, on the defense on the law, the court entered judgment for the defendant *non obstante veredicto*. Hughes appealed to the Supreme Court, who reversed the judgment and entered judgment for the plaintiff on the verdict. The court below had precluded Miller from going to the jury on his defense on the facts, and yet he was, of course, prevented from appealing by reason of the entry of judgment in his favor on the point reserved.

After judgment had been reversed by the Supreme Court, the question was whether Miller could make his exceptions, as originally taken in the court below, the subject of an appeal. On this question the Supreme Court said:

"When this court reversed the judgment *non obstante veredicto* and entered judgment on the verdict, it only intended to do what, in the position in which the case then appeared to stand, the court below should have done. Hitherto, no practical difficulty has arisen in cases like the present. Ordinarily, the judgment of this court has been pronounced while there was still time for the party winning below, but losing here, to take his own appeal if he had any grounds for reversal in his favor. But with the shortening of the time for appeal by the Act of May 19, 1897, P. L. 68, it is manifest that this cannot usually be the case hereafter. The most convenient practice, therefore, which will be followed in the future where our attention is called to a desire for an opportunity for appeal by the winning party below, in case he should lose here, will be merely to reverse the judgment and send the record back to the court below to enter such judgment as it should have entered in the first instance. The time for appeal by a different party will then begin to run from such judgment, so that no one will be barred without a fair opportunity to be heard. In the present case we have already entered judgment on the verdict and the time for defendant's appeal has passed."

Thereupon, on a rule to open their previous judgment, the Supreme Court modified it so as to let the reversal stand, but instead of directing judgment to be entered on the verdict, they remitted the record "to the court below for such judgment as law and justice required."

Several years later the question was raised again, in Hawn v. Stoler, 22 Pa. Super. Ct. 307 (1903). The plaintiff recovered

a verdict, and the trial court subsequently entered judgment for the defendant *n. o. v.* Upon appeal the Superior Court said:

"The defendant at the argument requested us, in case of a reversal, to preserve his right to an appeal upon exceptions taken in the course of the trial in the court below. For this reason, in view of the fact that it is now too late for the defendant to take an appeal if judgment were entered by us upon the verdict, we follow the precedent established by the Supreme Court in Hughes v. Miller, 192 Pa. 365, and reverse the judgment and remit the record to the court below with directions to enter such judgment in accordance with this opinion as law and right may require."

Six years later, in Hunt v. R. R. Co., 224 Pa. 610 (1909), the Supreme Court delivered the following opinion, which is quoted in its entirety.

"In this case there was a verdict for plaintiff, judgment *non obstante veredicto* for the defendant, and a reversal by this court, and a direction to the court below to enter judgment on the verdict. The defendant now asks for a modification of our judgment on the theory, apparently, that it will lose its right to appeal by lapse of time.

"This is a misapprehension. The order of this court is so worded that instead of entering the necessary judgment ourselves, we direct the court below to enter it, and the defendant's right of appeal in the original suit will run from the date of that judgment so entered."

The question raised by these cases is not as to the propriety or wisdom of allowing the unsuccessful party his appeal, but rather why there was any doubt, technically or otherwise, about his right to have it. In other words, why did the appellate court have to make special orders under the circumstances?

If the judgment entered by the court on appeal in such a case should date as of the time of the verdict, then the reason is clear, for, of course, now that the Act of 1897 has limited the right of appeal to six months, that period has almost invariably passed by the time the appellate court render their decision. But this is not the case. Judgments do not date as of the time of the verdicts on which they are entered.

If anything were necessary to prove this it would be suffi-

cient to refer to the cases where rights of action which die with the person are litigated, such, for instance, as libel. If a plaintiff brings suit for damages as a result of a libellous publication, recovers a verdict, and then dies before judgment is entered on the verdict, his estate cannot recover the sum which has been awarded. To get around this difficulty our courts have had recourse to an ancient English statute [2] and by a special order entered judgment as of a term when the plaintiff was living.[3] In such case the entry of judgment has generally been delayed by a rule for a new trial. It is clear that if the judgment dated back to the verdict, the estate of the decedent could recover on the judgment, no matter how long after his death it were entered. Moreover, that the judgment does not date back to the verdict has been directly ruled by the Supreme Court in two recent cases.[4]

But a judgment must have some date. If it does not date back to the verdict, it must date as of the time it is entered. If it dates as of the time it is entered, why should the appellate court in the three cases under discussion have felt called upon to make the rulings which have been quoted? The judgment would date as of the time the appellate court made their order, and the losing party would then have six months from that time in which to take his appeal.

It may be suggested that the appellate courts in these cases have directed the lower courts to enter judgment for the reason that if the judgment were entered by the appellate courts themselves, there could, of course, be no appeal from their judgment. This seems reasonable, but, if it is the real explanation, why have the appellate courts always placed their rulings upon the ground that they were preventing the losing party from being barred by the lapse of time? The language used leaves no doubt upon this point. The court's anxiety has always been to keep the appellee within the statute of limitations. This is what they have specifically said and nowhere have they suggested that the reason

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[2] 17 Chas. II, chap. 8.

[3] Wood v. Boyle, 177 Pa. 620 (1896); Griffith v. Ogle, 1 Binn (Pa.) 172 (1806).

[4] Jones v. Coal Company, 227 Pa. 509 (1910); Rively v. Railway Company, 228 Pa. 9 (1910).

was that there could be no appeal from a judgment of the appellate court. Furthermore, the appeal would not, as a matter of fact, be taken from the judgment of the appellate court. It would be an appeal based on exceptions to the rulings of the court below, which rulings had never been before the appellate court for consideration.

If the judgment does not date as of the time of the verdict, and does not date as of the time of the order of the appellate court, when does it date? This question is one of very great importance in connection with the lien of a judgment against a defendant's real estate. Obviously, the judgment cannot date back to the time of the verdict, for in that case there would be a retroactive lien, although before the Act of 1772 [5] judgments apparently did relate back to the first day of the term in which they were entered. It seems that this statute was copied from the 15th Section of the Statute of Charles II, but, in spite of the implication of its language, the uniform practice in Pennsylvania has always been to consider that the binding effect of judgments upon lands dates only from the actual entry of the judgments.[6] By the Act of April 22, 1909, P. L. 103, the entry of bail upon appeal discharges the lien of a judgment, and, apparently, although the language of the act is not quite clear it is restored again when the judgment is affirmed and the record remitted. It is interesting to speculate, in passing, upon the effect on the lien should the bail, pending the appeal, become bankrupt. This takes us, however, a little aside from the question.

If it is obvious that a judgment does not date back to the verdict it is equally obvious that it cannot date as of the time the appellate court enters it under the reasoning of these decisions, for then the losing party would be entitled to his six months from the date of that entry to take his appeal, which is all he is entitled to, at any rate, and the situation therefore would not call for any such action as that which was taken in the three cases cited. And, again, if the appellate court directs the court below, to enter the judgment, as was done in those cases, then,

[5] 1 Smith's Laws (Pa.), 390.
[6] 2 Troub. & H. Pr. 634.

if the judgment dates as of the time it was entered by the court below, why should the appellate court be careful to state that this would save the defendant from being barred by the statute of limitations, because, so far as the statute is concerned, he would not be barred by that in any event, no matter by what court the judgment was entered, unless the judgment dated back to the date of the verdict.

The most recent case on this subject is that of Hardencourt v. Iron Company, 225 Pa. 381 (1909). In this case there was a verdict for the plaintiff, and two rules taken by the defendant, one for a new trial and one for judgment *n. o. v.* The last rule was made absolute, and an appeal was taken by the plaintiff. The Supreme Court said:

"Our attention has been called to the desire of the appellee to have an opportunity to appeal if the assignment of error should be sustained. In accordance with the practice suggested in Hughes v. Miller, 192 Pa. 365, we remit the record of the common pleas with leave to reinstate the rule for a new trial, in order that judgment may be entered thereon as law and right require."

This case does not present the difficulties of the three cases previously discussed, because of the very significant action of reinstating the rule for a new trial. But it is the only one of the four in which such action could be taken, as in the others there does not appear to have been a rule for a new trial pending. So far as the general discussion is concerned, then, no appropriate comment can be made upon this case, other than to point out that the reference to Hughes v. Miller is hardly justified by the actual practice laid down in that case. Where the rule for a new trial is not disposed of, the proper practice, of course, is to reverse the judgment *n. o. v.* with a *procedendo.*[7]

While the situation, therefore remains unchanged, it must be admitted that the important matter in this connection is the fact that the practice is settled, and however interesting the reasons on which it is based may be, a discussion of them is open to the

[7] Bond v. R. R., 218 Pa. 34 (1907); Dalmas v. Kemble, 215 Pa. 410 (1906).

charge of being to a certain extent academic. It may be prudent therefore, and perhaps more profitable, to turn to a subject which is far from settled and in which a discussion may possibly be suggestive of practical results.

II. Amendments.

There are few questions of more practical importance than the right to amend when it has been discovered that the wrong parties have been sued, or that the proper kind of action has not been brought. Years ago the rules in this connection were very well settled, and the danger of technical mistakes in the institution of proceedings was very real. In fact, the ends of justice were not infrequently defeated. As recently as 1903, the writer was associated as junior in a case in which the defendant was sued as an individual, and upon his proving at the trial that his business had been incorporated, and that the letters "Inc." should have been inserted after his name on the writ, the court instructed the jury to find a verdict for the defendant. As the statute of limitations had run, no amendment was allowed, and the plaintiff, who had a serious claim against the defendant, was prevented from ever having it tried by a court and jury.

The more recent cases, however, of our Superior and Supreme Courts have gone very far the other way. Indeed they have gone so far that the question as to when and what kind of amendments will be allowed is at present quite unsettled, and the principle that it is more important to have a rule settled than how it is settled seems to be almost forgotten.

As usually happens, the breaking away from technicalities was begun by statutory enactment, and amendments "at any stage of the proceedings" where the names of parties had been erroneously stated, or there had been some mistake in the form of action, were successively authorized by the Acts of April 16, 1846, P. L. 353; May 5, 1852, P. L. 574; April 12, 1858, P. L. 243; May 10, 1871, P. L. 265 and March 14, 1872, P. L. 25. These statutes were the outgrowth of the Act of March 21, 1806,[8]

[8] 4 Sm. Laws (Pa.), 325.

which gave to a plaintiff the right to amend any informalities in his pleadings before or during trial.

But the power to allow amendments does not depend upon statutes alone. Every court of record has at common law such a power. The difference is that at common law the amendment is a matter within the discretion of the court, while under the statute it is a matter of right.[9] Even where the amendment is a matter of right, however, it can only be obtained by leave of court.[10] The real importance of the statutes on amendments lay in the fact that by making what had previously been discretionary a matter of right, the granting or refusing of statutory amendments became reviewable upon a writ of error. The rule seems now to have become even broader, and the refusal of any "proper amendment" may be made the subject of an appeal.[11]

As early as 1888,[12] the Supreme Court said upon this subject: "The effect of our statutes has been to give more prominence to the trial of the cause on its intrinsic merits in the interest of the rational and speedy administration of justice, than to the exact and precise observance of the artificial forms originally devised for this purpose, but which are supposed, in some instances, at least, to defeat rather than to promote the ends of justice," showing that at that time the tendency toward liberality was already well under way but, even in that case, the court reiterated what they referred to "as the cardinal rule adhered to in all cases, that the amendment must not introduce a cause of action substantially different," so that twenty years ago the only question for the court to decide was whether the amendment introduced a new cause of action.

Thus, where a writ of summons had been issued in trespass when the *præcipe* called for a writ in assumpsit, or *vice versa,* the court allowed the writ to be amended as a matter of course.[13]

So the form of the action could be changed if the change were one of form only and did not affect the substance. A suit

[9] Rhoads v. Commonwealth, 15 Pa. 276 (1850).

[10] Covey v. R. R., 6 Lack. Jur. 45; Wigton v. R. R., 25 W. N. C. 357 (1889).

[11] See Todd v. Ins. Co., 9 Pa. Super. Ct. 381, in which there is an interesting review of the decisions in the opinion of Judge Orlady.

[12] Erie v. Barber, 118 Pa. 6 (1888).

[13] Gould v. Gage, 118 Pa. 559 (1888).

in *assumpsit* for money had and received was allowed to be changed to one in trespass for deceit, as both actions were supported by the same statement of facts. In this case [14] the statute of limitations had run but as the cause of action was held not to be changed, the statute was held not to apply.

Turning to some of the more recent cases, we find it declared in Holmes v. R. R., 220 Pa. 189 (1908), that the general rule is that no new cause of action shall be introduced, and no new parties brought in *after the statute of limitations has become a bar.* In passing, as an illustration of what is not held by the court to be a new cause of action, reference may be made to the case of Schmelzer v. Traction Co., 218 Pa. 29 (1907), in which the plaintiff's first statement averred that the defendant's car did not stop, and she was subsequently allowed to amend her statement at the trial of the case by averring that the car did stop, but not long enough for her to get off. If an amendment is a matter of grace, it would seem that this plaintiff must have found the court in an exceptionally gracious mood.

It must be borne in mind that the general rule has always been that no amendment will be allowed which introduces a new cause of action or substantially varies the original case. This is important, as the more recent cases so frequently use the expression that no new cause of action may be introduced after the statute of limitations has run, that counsel may be easily misled into believing that a new cause of action may be introduced before the statute is run. Such, however, is not the case.[15] Thus the statement is made in Lane v. Water Co., 220 Pa. 599 (1908), that "a new cause of action cannot be introduced, or new parties brought in, or a new subject matter be presented, or a fatal or material defect in the pleadings be corrected after the statute of limitations has become a bar." It certainly seems that a fair argument could be made from this case in support of the view that any of these things could be done before the statute became a bar.

Again, and even more recently,[16] it has been decided that

[14] Smith v. Bellows, 77 Pa. 441 (1875).
[15] McNair v. Compton, 35 Pa. 23 (1859).
[16] Crum v. R. R., 226 Pa. 151 (1910).

amendments may be asked for at any time from the day the writ is issued until the day the judgment is satisfied, and where the amendment is such as to bring into operation the statute of limitations, the objection to the amendment on this ground must be made at the time it is asked for, or the amendment will be sustained. And if the objection to the amendment is overruled, the defendant must except to the order of the court allowing the amendment and assign the action of the court as error, in order to raise the question of the propriety of the amendment on appeal.

It is not easy to reconcile the cases. At the time of the last decision, and only two years after Lane v. Water Company, *supra,* the Supreme Court said that the right to add the name of a party by way of amendment after the expiration of the statutory period was no longer an open question, and allowed the husband to join his wife in an action for the death of their son over a year after the suit was brought. [Sontum v. Ry. Co., 226 Pa. 230.] And in McArdle v. Railway, 41 Pa. Superior Ct. 162 (1909), in which a suit was brought by a husband to recover damages for the negligent killing of his wife, without setting forth in his statement of claim the names of the children, as required by the act of 1855,[17] the court allowed the statement to be amended in this particular after a verdict had been rendered, and although the statute of limitations had intervened.

On the other hand, in Martin v. Railway, 227 Pa. 18 (1910), the court seems to have returned to stand upon the ancient ways. This case makes an interesting comparison with Schmelzer v. Traction Company,[18] *supra,* where the plaintiff appears to have come close to an averment of a different kind of negligence in her amended statement. In the Martin case[19] the plaintiff's first statement alleged that the defendant's car was run at an excessive speed, and no warning was given of its approach. Over a year later the plaintiff asked leave to file an amended statement, charging as negligence a premature start. At the trial, the allegations in the original statement were shown to be without foundation in

[17] Act of April 25, 1855, P. L. 309.
[18] 218 Pa. 29 (1907).
[19] Martin v. Railway, 227 Pa. 18 (1910).

fact, and although the plaintiff secured a large verdict, the court subsequently entered judgment for the defendant *n. o. v.*, on the ground that the amended statement should not have been allowed, and that on the original statement the plaintiff had shown no case. The Supreme Court affirmed this action of the court below, saying:

"The plaintiff proved herself out of court on the original statement. Can this situation be cured by amended statement setting up an entirely different theory after the statute of limiations had become a bar? All of our cases hold that this cannot be done if a new cause of action be introduced by the amended statement. * * * It is not therefore a case of adding to or amplifying the original statement within the rule recognized in some of our cases. * * * In the original statement the standard of care was the duty owed by the street railway company to a person not an intending passenger at the street corner. In the amended statement the relation of common carrier and passenger is set up, and the standard of care required in protecting an intending passenger when getting on the car is relied on."

If the plaintiff in this case actually had a just claim against the defendant on the facts set up in the amended statement, as the jury by their verdict appear to have found that she had, it would seem as though this decision might mark the beginning of a possible reactionary movement on the part of the Supreme Court.[20]

It is important to note in passing that this case [19] also decides that the defendant in an action in trespass does not have to plead the statute of limitations in order to defeat the plaintiff's claim on this ground. That the action was not brought within the statutory time may be shown by the record, or by evidence introduced at the trial, under the general plea of "not guilty." It is not clear just how this affects the ruling in Crum v. Railway, 226 Pa. 151 (1910), that an objection to an amendment on the ground of the statute of limitations must be made at the time the amendment is asked for, or the amendment will be sustained.

It is, perhaps, inevitable that in the many cases dealing with

[20] See also Coyne v. Railway, 227 Pa. 496 (1910).

the question of amendments there should be a certain amount of inconsistency in the decisions. Thus, in Jamesson v. Capron, 95 Pa. 15 (101), the heir was allowed to be substituted for the personal representative, while in Wildermuth v. Long, 196 Pa. 541 (1900), the substitution of the heir for the administrator was not allowed.

Again, in several other cases, amendments have been allowed changing the names of parties who have been entered as individuals so as to make them appear in their representative capacity, as from A to A, Administrator of B, deceased; A, Trustee, &c.[21] But in a recent case [22] the substitution of a widow as administratrix, as plaintiff in an action she had brought in her own name, was not allowed. In this decision the Supreme Court distinctly say that the substitution of the widow as administratrix for the widow as an individual would introduce a new cause of action.

The Court attempted to reconcile the various cases by laying down, in Holmes v. R. R. Co., 220 Pa. 189 (1908), the somewhat elastic rule that, where the rights of a party are likely to be defeated by having too few or too many as plaintiffs or defendants (and, inferentially by having made any other mistake in the pleadings), amendments that would not deprive the opposite party of any right will be allowed, citing Booth v. Dorsey, 202 Pa. 381 (1902).

There is no rule, however, that will satisfactorily reconcile all the cases on this point. On the whole, it may be said that our Pennsylvania decisions have gone very far toward allowing amendments. In two recent cases, amendments were allowed changing the name of the defendant from "a corporation of Pennsylvania" to "a corporation of the State of Maryland," even though the statute of limitations had run,[23] and changing the name of a corporation defendant, permitting it to be sued as an unincorporated association.[24] While in Dulaney v. Ry. Co., 228

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[21] Weikel v. Bockel, 4 Walk. (Pa.) 336 (1874); Boas v. Christ, 20 Pa. C. C. 196 (1897); Clifford v. Ins. Co., 161 Pa. 257 (1894).

[22] Le Barr v. R. R. Co., 218 Pa. 261 (1907).

[23] Meitzner v. Ry. Co., 224 Pa. 352 (1909).

[24] Central Printing House v. Board of Trade, 18 Pa. Dist. R. 1080 (1909).

Pa. 180 (1910), suit was brought against the defendant as a corporation, and on proof that it was not a corporation, the plaintiff was allowed to amend by bringing in all the railway companies that composed the defendant association, and as service was secured on only one of these companies, the suit proceeded to trial, and judgment was entered, against that company alone. This decision seems to be the last step taken along the line of earlier cases allowing suits by or against a partnership to be amended so as to bring in new partners,[25] and allowing amendments to change corporations to partnerships and partnerships to corporations.[26]

A careful consideration of many authorities on this subject leads to the conclusion that it is difficult, in any given case, to know just when the pleadings can and when they cannot be amended. Perhaps the only safe rule is for counsel desiring the amendment to ask for it, and counsel on the other side to oppose it. A careful search through the digests will doubtless supply each advocate with an excellent authority to sustain his position. If the amendment is allowed, the opposite party may, of course, plead surprise and secure a continuance. This is certainly so when the suit has been brought against joint tort-feasors, and after the evidence has failed to show any concert of action, and the plaintiff has amended his statement by changing it from one charging a joint tort to one for a several liability, or has discontinued his action as to one of the defendants,[27] or has changed the form of action,[28] and is presumably true in the case of any amendment. Where the form of action has been changed, the defendant may not only secure a continuance, but, by the Act of May 10, 1871, P. L. 265, may require the adverse party to pay all costs up to the time of amendment.

From all the cases two tendencies emerge. One is to hold parties rather strictly to the rules of pleading and to allow only such amendments as are authorized by statute and affect merely

[25] McGlynn v. Johnson, 1 W. N. C. (Pa.) 312 (1875); Bold v. Harrison, 1 W. N. C. (Pa.) 154 (1874).

[26] Lippincott, 2 W. N. C. (Pa.) 186 (1875); Delaware, &c., Co. v. Curren, 24 Pa. C. C. 505 (1901); Nurr v. Slaymaker, 14 Lanc. L. R. 366 (1897).

[27] Sturzebecker v. Traction Co., 211 Pa. 156 (1905).

[28] Taylor v. Hanlon, 103 Pa. 504 (1883).

the form of action. The other is to allow the parties great leeway, and, where substantial justice can be secured only by an amendment, to permit the same, even though the statute of limitations may have run, and regardless of the fact that the technical cause of action may be, to a certain extent, changed.

Two recent illustrations of these conflicting tendencies may be cited. In Shimp v. Gray, 41 Pa. Super. Ct. 542 (1909), the Superior Court *held* that after a rule for want of a sufficient affidavit of defense had been discharged by the lower court and an appeal taken, the defendant could not be permitted to file a supplemental affidavit containing facts discovered subsequently to the appeal. On the other hand, in Wood v. Kerkeslager, 227 Pa. 536 (1910), the Supreme Court ruled that after an affidavit of defense had been held good by the court below, but insufficient on appeal, the defendant might be permitted to file a supplemental affidavit, even after the return of the record, if it set up material and after-discovered facts. [It may be suggested that the better practice would be to require the defendant to set out his after-discovered facts in a petition to open the judgment.]

The first tendency above referred to would seem perhaps, in the long run, to be more conducive of an orderly and expeditious conduct of litigation; for while it is but natural to wish justice done in the individual case, yet, until we have reached the ideal state where justice will be exactly administered, there must always be some cases in which there is a failure. In the meantime, litigants must depend upon their own efforts and the aid of fal lible counsel, and even though mistakes occur, the interests of litigants in general will be best preserved by definite and settled rules of procedure.

Perhaps the fairest statement of the attitude of the Supreme Court on the whole subject appears in Wright v. Eureka, &c., Co., 206 Penna. 274, as follows:

"Statutes on amendments are liberally construed to give effect to their clearly defined intent to prevent a defeat of justice through a mere mistake as to parties or the form of action. Amendments, however, will not be allowed to the prejudice of the other party where the statute of limitations has run, by in-

troducing a new cause of action or bringing in a new party, or changing the capacity in which he is sued. A party whose name it is asked to amend must be in court. If the effect of the amendment will be to correct the name under which the right party was sued, it should be allowed; if its effect will be to bring a new party on the record, it should be refused after the running of the statute of limitations."

While this language is used more particularly in reference to a change of names, it undoubtedly may be considered as applying to amendments in general, and fairly warrants the statement that the present attitude of our Supreme Court is that as amendments in general are discretionary, they should be allowed if they work no injustice to the opposite party. If this may fairly be considered the general rule, it is apparent that each individual case will have to be decided upon its own merits.

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