valid pensions, old-age pensions.....". The definition of the term "industry" including as it does any calling, service, employment, handicraft, or industrial occupation or avocation of workmen, would, therefore, be justified under this Entry even if the same is not covered by Entry 29 above referred to. The entries in the Legislative lists should not be given a narrow construction, they include within their scope and ambit all ancillary matters which legitimately come within the topics mentioned therein. In the matters before us, moreover, the concerns or undertakings are all industrial concerns and fall squarely within the definition of the term "industry" strictly so-called and it is not open to the pursuers, situated as they are, to challenge the same. This contention also has no substance and must be rejected.

It, therefore, follows that the Act is *intra vires* the Constitution and Civil Appeals Nos. 333, 334 and 335 of 1955 as also Petitions Nos. 203, 182, and 65 of 1956, must be dismissed. There will, however, be one set of costs payable by the appellants in Civil Appeals Nos. 333 to 335 of 1955 to the respondents therein. So far as Petitions Nos. 203 of 1956, 182 of 1956 and 65 of 1956, are concerned, each party will bear and pay its respective costs thereof.

Before Bhandari, C.J.

REVISION CIVIL

CH. KIDAR NATH DATT AND OTHERS,— *Petitioners*

versus

KISHAN DASS BAIRAGI AND OTHERS,—*Respondents*

Civil Revision No. 215 of 1956.

1957

Jan., 10th

Code of Civil Procedure (Act V of 1908) Sections 92, 93 and Order I Rule 10—Amendment of plaint—Addition of parties—Such addition of parties whether can be made without the consent of the Advocate-General.

Held, that if the scope of a suit under section 92 or 93 of the Code of Civil Procedure is substantially altered or enlarged by the addition of the new party the previous sanction of the Advocate-General is necessary. If the scope remains unaltered and unchanged no such sanction need be taken.

Held, further, that the addition of a new party under section 92 or 93 of the Code of Civil Procedure stands on a completely different footing from the addition of a defendant to the said suit. Actions under section 92 are brought in a representative capacity, for when there is such a large number of persons as to make it impossible, or at least extremely impracticable, to bring them all before the Court as parties, it is only reasonable that a part of those interested should be allowed to sue for the benefit of many. If one or two plaintiffs who are acting in a representative capacity drop out, it is obviously open to certain other persons to step into their shoes and to figure as plaintiffs. By doing so they do not alter the cause of action, for their claim against the defendants proceeds on the same basis as the claim of the persons whom they have replaced.

Petition under section 115 Act No. V 1908 for revision of the order of Shri Sochet Singh, Subordinate Judge I Class, Hoshiarpur, dated the 9th January, 1956, allowing the application filed by respondent No. 1 under Order 1, rule 10, Civil Procedure Code and ordering that the plaintiffs-petitioners should implead him as a party to the suit by amending their plaint suitably.

H. L. SARIN, for Petitioners.

P. C. PANDIT, for Respondents.

JUDGMENT

Bhandari, C.J. BHANDARI, C. J. This petition under section 115 of the Code of Civil Procedure raises the question whether a new defendant can be added in a suit under section 92 of the Code of Civil Procedure without the previous sanction of the Advocate-General.

On the 26th August, 1955, Ch. Kidar Nath, Rai Bahadur Gopal Das and certain other persons

brought a suit under section 92 of the Code of Civil Procedure, against Ramsaran Das and Ram Parkash in which they asked for the removal of Ramsaran Das from the office of Mahant of a Thakardwara. On the 21st November, 1955, one Kishan Das presented an application under rule 10 of Order 1 of the Code of Civil Procedure in which he prayed that he be impleaded as a defendant to the suit as Ramsaran Das had been removed and Kishan Das had been appointed a Mahant by the *sewaks* on the 23rd June, 1953. The trial Court acceded to this request despite the protests of the plaintiffs and impleaded Kishan Das as defendant No. 3. The plaintiffs are dissatisfied with the order and have come to this Court in revision.

It is a recognised principle of law that a person is not at liberty to secure the redress of a public wrong by means of a civil suit when he suffers injury in common with the public generally, even though his loss is greater than others, unless a statute expressly empowers him to do so. It is equally clear that when the duty of enforcing the provisions of a particular statute is entrusted to a particular executive officer, the help of the Court can be invoked only by such executive officer and no other person and that it is not open to a member of the public to intrude upon his functions. In England the Attorney-General who is the protector of charities is normally a necessary party to actions relating to public charities. He may either act alone as the officer of the Crown who is by law entrusted with such duties or he may act on the request of a private individual who thinks the charity is being or has been abused. He has entire control of the action and no amendment can be made without his consent (Shelfords Law of Mortmain 400; *Attorney-General* v. *Fellows*) (1), for it is

(1) (1820) 1 Jac. and W. 254.

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essential that the authority and discretion of the Attorney-General in all these proceedings should be maintained perfectly unbroken, unfettered and unbiassed [*Attorney-General* v. *Ironmongers' Co.*,] (1)

The law in this country is not widely different. A member of the public in India has no power in his capacity as such to maintain a suit to enforce or administer a charitable trust, for section 92 of the Code of Civil Procedure provides that no person shall be at liberty to bring an action for the alleged breach of a charitable or religious trust or for remedying abuse or misapplication of charitable funds without the sanction of the Advocate-General.

The law in regard to the addition of parties is embodied in Order 1, Rule 10 of the Code of Civil Procedure. It empowers the Court in its sound discretion either upon proper motion of a party to the action or upon its own motion to direct that other persons be made parties so that complete justice may be done and the rights of all finally determined. An amendment cannot, however, be allowed if the effect of adding a new party would be to introduce a new cause of action. This is particularly so in cases under section 92 of the Code of Civil Procedure. When the Legislature declared that no suit under this section should be brought without the sanction of the Advocate-General, the intention obviously was that honest trustees should not be put to the trouble and expense of defending themselves in vexatious suits brought against them by irresponsible officers.

Mr. Sarin, who appears for the plaintiffs, has invited my attention to a number of authorities which appear to lay down the proposition that a

(1) (1840) 2 Beav. 313.

Court has no power to permit a new party to be added in a suit under section 92 of the Code of Civil Procedure if the effect of the amendment is to enlarge the scope of the suit or to alter the nature or the suit. One of the principal authorities cited by him is *Abdul Rehman Bupusheh and others* v. *Cassum Ebrahim and others* (1). In this case a learned Single Judge of the Bombay High Court reviewed all the English and Indian authorities bearing upon the point and came to the conclusion that plaintiffs are not entitled to maintain a suit against an added defendant if no sanction of the Advocate-General is obtained previous to his being made the defendant and previous to the amendment of the plaint. This authority appears to hold that no party or parties can in any circumstances be added without the previous sanction of the Advocate-General if other reliefs are claimed against such added parties. Other Courts have taken a slightly different view, for they have held that every addition of a new party does not necessarily invalidate the sanction already given. They have accordingly propounded the test that if the scope of the suit is substantially altered or enlarged by the addition of a new defendant previous sanction of the Advocate-General is necessary, but that if the scope remains unaltered and unchanged no such sanction need be taken *Gopala Krishnier, etc.* v. *Ganapathy Aiyar and others* (2), *Mandoori Durga Mallikharjana Vara Prasad Rao and another* v. *Gopala Charru and others* (3), *and Bapugonda Yadgonda Patil and others* v. *Vinayak Sadashiv Kulkarni and others* (4). The scope of the suit is enlarged when there is a totally different cause of action against the new defendant, *Keshavlal Punjaram* v. *Commissioner of Income-tax,*

(1) I.L.R. 36 Bom. 168.
(2) 58 I.C. 124.
(3) A.I.R. 1926 Mad. 970.
(4) A.I.R. 1941 Bom. 317.

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Bombay (1), or when he is stated to be the real trustee *Sital Das and another* v. *Punjab and Sindh Bank, Ltd., and others* (2). I find myself in respectful agreement with the test which has been evolved in these authorities.

Mr. Pandit, who appears for the new defendant, contends that his client claims to be a Mahant of this institution, that he is vitally interested in the subject-matter of the litigation, that it is impossible to have a complete determination of the controversy without his presence and consequently that the trial Court was justified in impleading him as a defendant. He has relied upon two sets of authorities in support of his contention. The first set of authorities consists of *Faizunnessa* v. *Ghulam Rabbani* (3), and an unreported decision of this Court in *Harnam Singh* v. *Sarna Singh* (4). In the earlier case a Division Bench of the Calcutta High Court expressed the view that in a suit or appeal instituted by a certain set of plaintiffs or appellants with the consent of the Advocate-General or the Collector under sections 92 and 93 of the Code of Civil Procedure the consent of the Advocate-General or the Collector to each fresh addition of a party is not necessary as a suit under these sections is not prosecuted by individuals for their own interests but as the representatives of the general public interested in the endowment. A similar view was taken in the unreported case referred to above. The addition of a new plaintiff in a suit under section 92 or 93 of the Code of Civil Procedure stands on a completely different footing from the addition of a defendant to the said suit. Actions under section 92 are brought in a representative capacity, for when there is such a large number of persons as to make

(1) A.I.R. 1944 Bom. 164.
(2) A.I.R. 1934 Lah. 717.
(3) I.L.R 62 Cal. 1132.
(4) S.A.O. No. 31 of 1954.

it impossible, or at least extremely impracticable, to bring them all before the Court as parties, it is only reasonable that a part of those interested should be allowed to sue for the benefit of many. If one or two plaintiffs who are acting in a representative capacity drop out, it is obviously open to certain other persons to step into their shoes and to figure as plaintiffs. By doing so they do not alter the cause of action, for their claim against the defendants proceeds on the same basis as the claim of the persons whom they have replaced. These two authorities cannot, in my opinion, support the contention put forward on behalf of the new defendant.

The second set of authorities on which Mr. Pandit places his reliance are two decisions of the Madras High Court, *Gopal Krishen* v. *Ganpattey Aryed and others* (1), and *Mandoori Durga Malikharjana Vara Prasad Rao and another* v. *Gudipudi Gopala Charlua and others* (2). In these cases the Madras High Court held that where in a suit instituted with the sanction of the Advocate-General under section 92 of the Code of Civil Procedure, it is necessary to add a defendant the test for determining whether such addition requires a fresh sanction from the Advocate-General before the suit can be proceeded with against him is whether the scope of the suit has been really enlarged by the addition of the new party.

The strictly legal consequences which flow from a consideration of the several authorities which have been cited by the parties have been admirably summarised in A.I.R. Commentaries on the Code of Civil Procedure. The learned author observes at page 921 that where in a suit instituted with the required sanction the Court adds a new

(1) 58 I.C. 124.
(2) A.I.R. 1926 Mad. 970.

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defendant under Order 1, Rule 10, in order to effectually and completely adjudicate upon all the questions involved in the suit, but such addition does not alter the nature of the suit, no new sanction need be obtained nor need it be obtained for transposing a defendant to the array of plaintiffs. Where such addition or other amendment does alter the nature of the suit, a fresh sanction is necessary. Thus, an amendment relating to a fresh cause of action involving a fresh addition of parties and fresh reliefs against them requires the sanction of the Advocate-General.

The question now arises whether the addition of Kishan Das as a defendant has or has not the effect of enlarging the scope of the suit or of altering the nature of the suit. Mr. Sarin contends, and in my opinion, with a considerable amount of justification, that the addition of this new defendant is likely to alter not only the cause of action but also to enlarge the scope of the suit. In his application under Order 1, Rule 10 of the Code of Civil Procedure, Kishan Das stated that Ramsaran Das had been removed from the Mahantship of the Thakardwara and that he, namely, Kishan Das applicant, had on the 23rd June, 1953, been appointed a Mahant by the worshippers of the Thakardwara. The plaintiffs do not admit the correctness of these allegations. In order to decide the matters in controversy between the parties it would be necessary to frame a number of issues with the object of determining; (1) whether Ramsaran Das was in fact removed from the Mahantship by the worshippers of the Thakardwara; (2) whether Kishan Das was appointed a Mahant by the *sewaks* on or about the 23rd June, 1953; (3) whether Kishan Das could be elected a Mahant in accordance with the rules of custom by which the parties are regulated; and (4) whether he is entitled to a

declaration of status in a suit under section 92 without paying the appropriate fees in respect of such relief. I am clearly of the opinion, that the addition of Kishan Das is almost certain to alter the cause of action, to alter the nature of the suit and to enlarge the scope of the litigation.

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For these reasons I would accept the petition, set aside the order of the trial Court and direct that the name of Kishan Das be removed from the list of defendants. The plaintiffs will be entitled to the costs of this Court.

The parties have been directed to appear before the trial Court on the 29th January, 1957.

CIVIL WRIT

Before Falshaw, J.

MAQBOOL AHMAD AND ANOTHER,—*Petitioners*

versus

THE CUSTODIAN OF EVACUEE PROPERTY, NEW DELHI,—*Respondent*

Civil Writ No. 33D/56.

1957

Jan., 14th

Administration of Evacuee Property (Amendment) Act (XLII of 1954)—Section 7A and 10—Effect of—Power of the Assistant Custodian to issue notices under section 7 of the Administration of Evacuee Property Act (XXXI of 1950) after 7th November, 1954, whether taken away.

Held, that the fact that section 10 of the Amendment Act makes section 4 of the Amendment Act retrospective does not change the date of the commencement of the Amendment Act. The reason why section 4 was made specifically retrospective was to cover those cases where property might have been declared evacuee property after 7th May, 1954, but before the Amendment Act came into force even though the case might not be covered by the two provisos.

Application under Article 226 of the Constitution of India praying that the record of the Custodian General