MEIDEEN *v.* BANDA *et al.*

WALATAPPA CHETTY, Claimant.

D. C., Kurunégala, 792.

Civil Procedure Code, s. 18—Application to be made added party—Diversity of interest between plaintiff and applicant—Interpleader—Duty of Colonial Courts to follow decisions of Court of Appeal on Imperial Statutes, where such Statutes are identical with Colonial Statutes.

Section 18 of the Civil Procedure Code corresponds with the language of Rule 11, Order XVI., of the Supreme Court of England, and in the interpretation of that section effect must be given to the principle that, wherever a Court can see in the transactions brought before it that the rights of some of the parties may or will be probably affected, so that under the former system of law there might have been several actions brought in respect of the same transaction, the Court shall have power to bring all the parties before it and determine all their rights by one trial, in order that the cost of litigation may be diminished as much as possible.

If the interest of the person applying to be added party is adverse to and independent of the plaintiff's, the defendants might interplead and retire, leaving the deposit to be contested between the two rival claimants, or the applicant should be added a defendant, if added at all, and should put in a defence and counter-claim to the sum in deposit.

When the provisions of a Colonial Statute are identical with those of an English Statute, the Colonial Courts should follow the decisions of the Court of Appeal on the Imperial Statute.

IN this case the plaintiff sued the defendants to recover the sum of Rs. 456, said to be due by them upon their mortgage bond executed in favour of one Pakir Meideen, who by deed had assigned all his interest therein to the plaintiff.

Summons having been duly served on the defendants, the first and third defendants appeared, and produced to the Court a receipt for Rs. 120 purporting to be under the hands of Pakir Meideen, the obligee, and admitted their indebtedness as regards the balance.

On the same day, one Walatappa Chetty appeared and claimed the whole of the amount due on the mortgage bond sued upon, by right of purchase at a Fiscal's sale held in execution of a writ sued out against Pakir Meideen and another person, whereat the Fiscal sold all the right, title, and interest of Pakir Meideen in and to the said bond. The claimant prayed that his claim may be inquired into, that the deed of assignment upon which plaintiff rested his case may be declared null and void, and that the claimant may be held entitled to the amount payable on the mortgage bond. Filing this application supported by an affidavit, the applicant moved to be added as party plaintiff.

The District Judge postponed judgment as regards the first and third defendants to a day on which he desired the case to be fixed

for *ex parte* trial as against the absent defendants, and he allowed applicant's motion also to stand over for that day with notice to plaintiff. On the 24th April, 1894, the District Judge entered decree *nisi* against all the defendants in favour of plaintiff for the amount claimed less Rs. 120, by consent against the first and third defendants and by default against the second and fourth defendants.

The applicant's motion to be made added plaintiff was disposed of when plaintiff moved (on the 4th June) that the decree *nisi* already entered be made absolute. The District Judge's order was as follows :—"After reading the application and affidavit of "Walatappa Chetty, I refuse to make the decree *nisi* absolute. I "am of opinion that the presence of Walatappa Chetty before the "Court is necessary, in order that all the questions in the action "may be completely and effectually settled. I direct, therefore, "under the 18th section of the Civil Procedure Code, that the name "of Walatappa Chetty be added as plaintiff."

On appeal against this order—

Sampayo, for plaintiff appellant.

Dornhorst, for applicant respondent.

Cur. adv. vult.

On the 31st January, 1895, the Supreme Court varied the order of the Court below, by allowing Walatappa Chetty to be added as a party defendant in the action.

WITHERS, J.—

In this action four persons are sued for a debt under a bond which has been assigned to the plaintiff by the obligee.

On the 8th of March, 1894, the day fixed in the summons for appearance and answer, the first and third defendants appeared and admitted their indebtedness under the bond in all but a sum of Rs. 120, which they said they had paid, and which plaintiff acknowledged he had received.

Notwithstanding service of summons, neither the second nor the fourth defendants appeared.

On that day, one Walatappa Chetty applied to the Court for an order to be added as party plaintiff in this action, on the ground that the bond debt of the defendants to the original obligee, one S. P. Pakir Meideen, had been duly assigned to him by the Fiscal after sale thereof in execution of a judgment against the said S. P. Pakir Meideen. The District Judge directed the applicant's Proctor to give the plaintiff notice of his claim and postponed adjudication in the case and in the matter of the application for one month, within which time the two defendants who had

appeared undertook to deposit in Court the balance of what was due by them under the assigned bond. The journal entries show that, on the 9th of April following, none of the parties nor the applicant was present in person or by Proctor except the plaintiff, who was present by his Proctor.

Proceedings were adjourned to the 24th of April, on which day there was an *ex parte* trial of the action as against the second and fourth defendants. At the conclusion of the trial, a decree *nisi* was entered for the plaintiff against these parties. Notice of this decree was issued, returnable the 21st of May.

On that day, according to the minutes, the second and fourth defendants failed to appear to show cause against the decree *nisi* being made absolute. On that day, too, the plaintiff and the applicant were present by their respective Proctors, and according to the minutes it would appear that the applicant had caused notice of his application to be served not only on the plaintiff as directed, but also, and very properly, on the four defendants in this action, and further on the parties, including the said S. P. Pakir Meideen, against whom he had obtained the judgment in execution of which the bond debt had been seized and sold and purchased by the applicant.

The case was not taken up that day, but adjourned to the 4th June following.

In the meantime, on the 29th of May, the applicant, with the consent of plaintiff's Proctor, moved to file an additional list of documents and witnesses, and this motion was allowed.

On the 4th of June, plaintiff's Proctor moved the Court to make the decree *nisi* against the second and fourth defendants absolute, and besides doing that, this Proctor, without any distinct motion addressed to the subject, contended "that the applicant had no "*locus standi* as regards this action in its present stage."

Thereupon the District Judge made the order appealed from, and it runs as follows :—

"After reading the application and affidavit of Walatappa "Chetty, I refuse to make the decree *nisi* absolute. I am of "opinion that the presence of Walatappa Chetty before the Court "is necessary, in order that all the questions in the action may be "completely and effectually settled. I direct, therefore, under the "18th section of the Civil Procedure Code, that the name of "Walatappa Chetty be added as plaintiff."

Such are the facts of the case, and the question for us to decide is, whether the applicant should be added as a party under the 18th section of our Civil Procedure Code. As it cannot be urged for a moment that the name of the applicant ought

to have been originally joined as plaintiff or defendant, the only question is,—Is the applicant one whose presence is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action ?

Now, the language of the 18th section of our Civil Procedure Code corresponds with the language of Rule 11, Order XVI., of the Supreme Court of England, and this being so, I take it that on principle we are bound to follow the decisions of the High Court of Appeal on questions arising out of the rules of the Supreme Court in England, conformably to the judgment of my Lords of the Privy Council in the case of *Trimble v. Hill*, reported in *49 L. J., Privy Council, p. 49.* The head-note of it is : "Where the provisions of a Colonial Statute are identical with "those of an English Statute, the Colonial Courts should follow "the decisions of the Court of Appeal on the Imperial Statute." I therefore propose to take for my guidance in this matter the introductory part of the judgment of my Lord ESHER, M.R., in the case of *Byrne v. Brown*, reported in *58 L. J., Queen's Bench, p. 411.* His lordship observes :—

"It seems to me to be the fundamental principle and one of the "chief objects of the Judicature Acts that, wherever a Court can "see in the transaction brought before it that the rights of some "of the parties may, or probably will, be affected, so that under the "former system of law there might have been several actions "brought in respect of the same transaction, the Court shall have "power to bring all the parties before it and determine all their "rights by one trial.

"The evidence on the issues raised by new parties being "brought in need not be exactly the same. It will be enough if "the main part of the evidence or of the inquiry will be the "same, and the Court has power to bring all the parties before it "and to determine the matter in one action.

"Another great principle of the Judicature Acts was to dimi-"nish, if possible, the cost of litigation. The Court ought, there-"fore, to construe these Acts as largely as it can, in order to carry "out, as far as possible, those objects to which I have referred."

Applying these principles to this case, can it be said that this case is touched by them ?

It is clear that the plaintiff and the applicant have no community of interest, and that there can be no trial as to what share in the chose of action each is entitled to. Their claims are adverse and independent of each other : one claims as the assignee of Meideen *volens*, the other as an assign in law of Meideen *invitus*.

I assume that this is a case where the defendants might have

interpleaded and retired from the field, leaving their deposit to be contested between the two rival claimants.

The defendants, however, have not taken this course, and they have raised no objections to the intervention of Walatappa.

I can find no precedent of a case in the English Courts where a person who might have been brought into Court on an interpleader has been added as a party at his own instance.

In a note at page 416 of *O'Kinealy* on the Indian Civil Procedure Code (3rd edition), it is said, "When a suit has been brought "against a person before instituting the interpleader suit, he "should endeavour to have the other claimants made parties under "section 32" [which corresponds to the section of our Code now in question], "so as to have the whole question disposed of in the one "suit." The author, as far as I can discover, cites no authority in support of this proposition ; on the contrary, he refers to certain Indian cases which in his eyes appear to militate against it.

Reverting, however, to the principles laid down by the Master of the Rolls, it seems to me that the main part of the inquiry into defendant's obligation will be whether Meideen had any interest in this chose of action at the time he purported to assign it to the plaintiff, or had power then to dispose of it. If he had, plaintiff will be entitled to judgment. If he had not, and if the applicant had duly acquired it at a judicial auction, the latter will be entitled to the deposit.

The cause of action, viz., defendants' indebtedness on the bond, is common to both plaintiff and the applicant, and the question at issue will be, Who has the better title to recover this debt ? The judgment will bind them once and for all.

The order cannot of course stand as it is. The numerous cases cited at page 366 of the *Annual Practice, 1894*, go to show that if a person not a party seeks to intervene under Rule 11, Order XVI., he should apply to be made a defendant, and state the relief which he seeks. The applicant here should be added as a defendant, if added at all, and should put in a defence and a counter-claim to the sum in deposit.

I have been much exercised by this question, but the conclusion I come to is that the applicant, Walatappa, should be allowed to be added as a party defendant in this action, and I would so decree.

BROWNE, J.—

When first and third defendants were served with the summons in this action they appeared and produced a receipt to them by plaintiff for a part payment of Rs. 120 which plaintiff admitted, and, says the record, "admit that they owe the balance on the

bond, but a Chetty has told them not to pay plaintiff." The next moment thereafter Mr. Modder filed a proxy of Walatappa Chetty, and applied that his client be added as party plaintiff. He filed affidavit of Walatappa having acquired the original obligee's right, title, and interest by purchase, and declined to admit the receipt produced. The defendants present undertook to deposit the balance which the Court officer should compute to be due.

It does not appear that this computation was ever made, or that these defendants were ever required to deposit any sum.

Had defendants been the party applying for an order to join the applicant as an added party, it would have been necessary that the deposit should have been made forthwith ere the matter proceeded further; but as the application was by the would-be added party, the order had not to be enforced unless the application were ultimately allowed, which, pending the result of this appeal, has not yet occurred. All that has since been done has been to enter a decree *nisi* against the other defendants and to discuss Walatappa's application on notice to the plaintiff. After such discussion the learned District Judge made order allowing it, and plaintiff has appealed.

I agree in the view of my brother Withers, and for the reasons given by him, that the order of the learned District Judge should be affirmed as directed by him. I would, however, have suggested that in view of the special provision made in the second paragraph of section 18 of our Code, Walatappa Chetty should be designated "added party" only, without its being stated that he is added as a plaintiff or defendant. This provision is not to be found in section 32 of the Indian Civil Procedure Code, or in Order XVI., Rule 11, of the Judicature Rules of 1883. In effect it would keep this new party in the suit always and entirely distinguished from the original parties so as to avoid confusion of him with either or any of them or their rights or claims. As, however, the rest of the Court affirm the order in this respect I will not dissent therefrom, so that the practice may be settled.

In both the Indian and our own Code, the provisions and subjects of section 18 (Indian, 32) were kept in view when permitting interpleader procedure by section 628 (Indian, 470), when it was there provided that, if any action is pending in which the rights of all parties can properly be decided, an interpleader action should not be instituted, and I presume it is this proviso which is the authority for O'Kinealy's dictum quoted by my brother Withers. Of course, as the writer is careful by reference to certain decisions to remind his reader, there is no provision in the Indian (nor the Ceylon) Code similar to that in the Judicature Rules (1883),

Order XVI., Rule 48, whereby a defendant may obtain leave to have joined one against whom he claims to be entitled to contribution or indemnity—the rule whereunder were made the orders in the *Swansea Shipping Company's case* (*1 L.R., Q.B. 644*) and *Bower v. Hartley* (*ib. 652*) cited by Mr. Dornhorst in argument. Once the applicant notified to them his claim, thereafter promptly appeared in Court and repeated it there, the position of affairs more closely resembled that in *Reading v. School Board for London* (*16 L.R., Q.B. 686*), where defendants, with notice of assignment to claimant by plaintiff of the moneys due him by them, moved and were allowed to interplead on payment of their debt, and issue was framed to determine the rights of the plaintiff and claimant.

It is to me clear that were it not for this procedure the defendant would be exposed to two actions on the bond, and that, if judgment went against him in both, he might either be damnified thereby by having to satisfy the double decree, or might possibly be driven to bring a third action if such a course were open to him. It is unreasonable to require him in two separate actions to plead the right or claim of the plaintiff in each suit to his trouble and costs, when by lodgment of his admitted debt in Court he stands absolved from all litigation.

LAWRIE, A.C.J.—

In this point of practice I wish to agree with the rest of the Court, but I cannot refrain from saying that I have difficulty in seeing what right Walatappa Chetty has to interfere in this action.

Having, as he alleges, a complete and preferable right as creditor in this bond, he can bring action on it whenever he likes. He has not yet done so. The plaintiff (who also alleges a complete and preferable right) was more prompt; he lost no time in bringing action against the debtors; these debtors have not contested the plaintiff's right nor their liability to him; indeed they paid part of the debt before action. Between the parties to this action there is no contest; no question has to be tried.

I doubt whether there are here the conditions required by Lord Esher, for in this action there would be no evidence and no inquiry if Walatappa Chetty's application be refused. If Walatappa Chetty be added as defendant, there must be new pleadings. What cause of action the plaintiff can allege against Walatappa I do not know.

I would prefer to leave the parties to bring their actions in their own way; the defendants seem to be willing that the plaintiff should get judgment against them; why should the Court interfere to help Walatappa Chetty, who has abstained from bringing an action, or to help the defendants, who have not asked for help?