1903.
April 2 and May 5.

PANIS APPUHAMY *v.* SELENCHI APPU *et al.*

D.C., Negombo, 4,492.

Lease—Action for rent—Liability of joint lessees—Construction of deed of lease—Intention of parties—Obligation in solidum.

When two or more persons have joined in stipulating for the payment of a certain sum of money, each is ordinarily liable to pay a *quota* of that money.

It is only when the intention of the parties is clearly expressed that each person shall severally pay the whole, that each person becomes bound *in solidum*.

Where two lessees covenant to pay a certain sum of money as rent, and there are no words in the lease clearly showing that each lessee bound himself *in solidum*,—

Held, that each lessee is not severally liable for the payment of the whole rent.

THE facts of the case are set out in the judgment of Layard, C.J. The appeal was heard on the 2nd April, 1903.

W. Aserappa, for defendant, appellant.

No appearance for respondent.

Cur. adv. vult.

5th May, 1903. LAYARD, C.J.—

This action has been brought by the executor of the deceased lessor of certain immovable property against two joint lessees to recover certain rent due under the lease, and the executor sought to have the two lessees declared jointly and severally liable to pay the whole rent claimed. The District Judge, after pointing out that there was no provision in the lease stating that the two lessees were jointly and severally liable, held that as both defendants joined in the lease they were jointly and severally liable, and a decree was entered against them in the Court below in terms of that judgment. They have appealed against that judgment and decree, and contend that they are not each of them liable *in solidum*.

The Roman-Dutch Law authorities appear to lay down that an obligation contracted generally by several persons is not an obligation binding on each of them *in solidum*, unless there is something in the nature of the subject to induce a different construction and render it several in respect of the separate interests of the contracting parties.

In the lease now under consideration there are no words showing that the obligation had been contracted by the lessees *in solido*.

In *Terunnanse v. Gunasekara* (*1 N. L. R. 206*) this Court held that one of several lessors may sue for his share of the rent, and the passage in *Voet* referred to by Chief Justice Bonser in his judgment is applicable to a case of plurality of lessees as well. Voet (*lib. 19, tit, 2, section 21*) lays down as follows:—*Locati actio est personalis bonae fidei quae locatori datur, atque etiam conductori, qui id, quor conduxerat, alteri rursus sublocavit, si plures locaverint, singulis pro suâ parte; contra conductorem, et, si plures sint, contra singulos pro rata, nisi aliud nominatim pacto actum sit, aut appareat locatorem singulorum personas in solidum respexisse et ita duos pluresve in solidum fecisse reos locationis.* Mr. Berwick translates the above passage thus:—" The *actio locati*—which is a personal action, *bonâ fide*, given to the locator and also to a conductor, who has sublet to another what he has taken on rent, and if there has been a plurality of locators, to each for his share—lies against the conductor, and if there is a plurality of these against each of them *pro ratâ*, unless it has been expressly agreed otherwise or it appears that the locator had looked to each *in solidum*, and so two or more persons had become liable on the hiring for the whole ". (Berwick's *Translation, New Edition, p. 219.*) Further, with regard to co-obligors generally, I find it laid down by Vanderlinden (*lib. 1, chap. 14, sec. 9, para. 7, Henry's Translation, p. 203*):—" However, an obligation may be entered into by which each party may be bounded or entitled *in solidum*, when this is the object of the several parties, provided however that payment made to one of the parties frees all the others. This is entitled an obligation in *solidum*, and, according to the general rule, has no place, but when expressly stipulated, except in some few cases, as when the partners of any firm enter into any contract on account of their trade, or when several persons are charged with one and the same guardianship, or when several persons have conspired together and are equally principals in the commission of some crime and are thus equally liable in damages, or have contracted together a debt *in solidum* and are each liable for the whole with respect to the creditor, though among themselves the debt is divisible thus with respect to the creditor, they have not the *beneficium divisionis*, or right to split the demand; yet with respect to each other, when one has paid the whole, he is entitled to demand from the creditor a cession of his right of action against the other co-debtors, which he cannot refuse; and in case he should be unable to give this cession of action, he would lose his right of suing *in solidum* any of the parties to the obligation "; and by Pothier (*pt. II., chap. 8, art VIII., section 11. See vol. I. of Evans' Translation, p. 147*):—" Solidity may be stipulated in all contracts

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of whatever kind. But regularly it ought to be expressed; if it is not, where several persons have contracted an obligation in favour of another, each is presumed to have contracted as to his own part, and this is confirmed by Justinian in the *Novel*, 99. The reason is that the interpretation of obligations is made in cases of doubt in favour of debtors, as has been shown elsewhere ". In a later passage Pothier mentions certain cases in which solidity between several " debtors of the same thing " takes place, although it is not expressly stipulated. The cases given by Pothier are those enumerated by Vanderlinden in the passage cited by me above. As a further exception (see *vol. I., Evan's Translation, p. 146*) Pothier mentions " the case of indivisible obligations which are not susceptible of parts ". In such a case each obligor is as completely bound for the performance of the whole as if he alone had contracted the obligation, although the obligation does not expressly state that it is contracted *in solido*.

According to the above-cited authorities the law appears to be as follows:—When persons have joined in stipulating for the payment of a certain sum of money, each is ordinarily liable to pay a quota of that money, and it is only when the intention of the parties is clearly expressed, that each is severally bound for the payment of the whole, that each person becomes liable *in solidum*.

Here we have an ordinary contract of lease by two lessees in which they covenant to pay a certain sum by way of rent, and there are no words in the lease clearly showing that each lessee bound himself *in solidum*, and each lessee is consequently not severally liable for the payment of the whole of the rent claimed.

The judgment of the District Judge must be modified in so far as it finds each of the defendants severally liable for the payment of the whole rent due and claimed in this action.

The appellants are entitled to their costs of appeal.

MONCREIFF, J.—I agree.