

1903.
May 12.

Present: Sir Charles Peter Layard, Chief Justice, and Mr.
Justice Wendt.

AHAMADO LEBBE *v.* MARIS APPU *et al.*

D. C., Colombo, 13,876.

*Vendor—Notice to warrant and defend title—Rights of vendor—Procedure—
Roman-Dutch Law—Civil Procedure Code, s. 18.*

Where a vendor receives formal notice calling on him to warrant and defend his title to a property sold by him, he may either take part in the suit against the trespasser in order to prevent collusion, or he may suffer the purchaser to appoint him procurator *in rem suam* and take the conduct of the action into his own hands, or if he is made a defendant in the action he may ask, under section 18 of the Civil Procedure Code, that he be transferred from the position of a defendant to that of a plaintiff.

THE facts sufficiently appear in the judgment of Wendt J.

Bawa, for the sixth defendant, appellant.

H. J. C. Pereira, for the defendants, respondents (first to fourth).

Cur. adv. vult.

(1) (1903) 9 *N. L. R.* 246, at p. 248.

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The appeal of the sixth defendant in this case is practically an appeal on behalf of the plaintiff, and as such we cannot recognize it. The sixth defendant is one of the vendors to the plaintiff, the seventh, eighth, and ninth defendants being the other vendors. These four parties were made defendants, but the plaint contained no prayer for relief against them beyond the prayer that the Court should summon them to appear and warrant and defend the plaintiff's title to the land which was the subject of the action. Now, a purchaser in the plaintiff's position, who is driven to bring an action against a person disputing his title, has no doubt to give a formal notice of action to his vendor in order to enable the latter to intervene in the action (if so advised) and support the plaintiff in his contest with the disturbers. *Voet* (21, 2, 20) deals with the duty of a vendor receiving such a notice. He may take part in the suit in order to prevent collusion, or he may suffer the purchaser to appoint him procurator *in rem suam* and may take the conduct of his action into his own hands. In the present instance the sixth defendant filed no pleading, and he appeared in person at the trial. He did not ask, as I think he might have done under section 18 of the Civil Procedure Code, that he be transferred from the position of a defendant to that of a plaintiff, and he did not undertake the conduct of the case as against the opposing defendants. The case accordingly was conducted by the plaintiff, who was represented by counsel and proctor. Decree was passed against the plaintiff holding that his title was bad, and the plaintiff, notwithstanding, as I am informed at the bar, every effort of the sixth defendant to induce him to appeal against that decree, has refused to do so. We think that the sixth defendant has himself to thank for the position in which he finds himself. He seems to have had confidence in the plaintiff's management of the litigation, and plaintiff did so far as appears avail himself of all the assistance which the sixth defendant offered him. Nothing like fraud or collusion between the plaintiff and the opposing defendant is suggested, and we see no reason for interfering in the appellant's behalf.

The appeal is therefore dismissed. Counsel agree to the costs being divided.

LAYARD C.J.—I agree.

