ARUMUGAM COOMARASWAMY

v.

ANDIRIS APPUHAMY AND OTHERS

SUPREME COURT.
SHARVANANDA, C. J., RANASINGHE, J. AND ATUKORALE, J.
S. C. APPEAL No. 38/84.
C. A. No. 56/83.
D. C. ANURADHAPURA 10581/MB.
MAY 23, 1985.

Addition of parties – Section 18 (1) Civil Procedure Code.

In deciding whether the addition of a new party should be allowed under section 18 (1) of the Civil Procedure Code the wider construction adopted by English Courts is to be preferred. Whenever a Court can see in the transaction brought before it that the rights of one of the parties will or may be so affected that other actions may be brought in respect of that transaction the Court has the power to bring all the parties before it and determine the rights of all in one proceeding. It is not necessary that the evidence on issues raised by the new parties being brought in should be exactly the same. It is sufficient if the main evidence and the main inquiry will be the same. Even if the narrower construction is adopted a person who has to be bound by the result of the action, or has a legal right enforceable by him against one of the parties to the action which will be affected by the result of the action should be joined ; so also where the question raised by the party seeking to be added is so inextricably mixed with the matters in dispute as to be inseparable from them and the action itself cannot be decided without deciding it, then the addition should be made ; if the plaintiff can show that he cannot get effectual and complete relief unless the new party is joined or a defendant can show that he cannot effectually set up a defence which he desires to set up unless the new party is joined, the addition should be allowed.

Cases referred to :

(1) *Meideen v. Banda (1895) 1 NLR 51.*
(2) *Ponnuthurai et al v. Nona Bulkies Juhar (1959) 57 CLW 79, 66 NLR 375.*
(3) *The Chartered Bank v. L. N. de Silva (1964) 67 NLR 135.*
(4) *Amon v. Raphael Tuck and Sons Ltd. [1956] 1 All ER 273.*
(5) *Byrne v. Browne and Diplock (1889) 22 QBD 657.*
(6) *Montgomery v. Foy, Morgan and Co. (1895) 2 Q.B. 321.*
(7) *Norris v. Beazley (1877) 2 CPD 80, 83.*
(8) *Fire, Auto Marine Insurance Co. Ltd v. Greene [1964] 2 All ER 761.*
(9) *Gurtner v. Circuit [1968] 1 All ER 328.*
(10) *Weerapperuma v. De Silva (1958) 61 NLR 481.*
(11) *G. A. Kalutara v. Gunaratne (1967) 71 NLR 58.*

APPEAL from the judgment of the Court of Appeal.

S. Mahenthiran for petitioner-appellant.

S. W. B. Wadugodapitiya, Additional Solicitor-General with *S. Hettige, S.C.* for 2nd and 3rd respondents.

P. K. Liyanage for plaintiff-respondent.

Cur. adv. vult.

June 19, 1985.

RANASINGHE, J.

The appellant, who had obtained a lease of the land, which is the subject-matter of these proceedings, from the Anuradhapura Preservation Board, entered into a Lease Bond bearing No. 274 of 23.9.68 (X1) with the 2nd respondent and also a Rent-Purchase Tenancy Loan Agreement with the 3rd respondent on 10.10.1973, in terms of which he was to construct a house on the said land with the loan so obtained by him from the said 2nd and 3rd respondents and was to repay the said amount by monthly instalments. The petitioner has, after a period of time, fallen into arrears ; and, when the 2nd respondent was preparing to take steps against him the petitioner had entered into an agreement on 4.4.76, (X2), with the plaintiff-respondent, and the members of his (plaintiff-respondent's) family, to sell the said land and premises to the plaintiff-respondent. The plaintiff-respondent had thereupon paid all the arrears and also the other sums of money due from the appellant to the 2nd and 3rd respondents. Thereafter the petitioner, together with his wife and children, requested, in terms of the aforesaid agreement X2, the 3rd respondent, on 10.10.79, to transfer the said land and premises to the plaintiff-respondent. The 3rd respondent had then entered into a lease with the plaintiff-respondent, in respect of the said land and premises, upon the document X3, on 1.6.80. The plaintiff-respondent had proceeded to pay the instalments regularly ; but, on 28.7.82, the 3rd respondent had, by his notice X4, informed the plaintiff-respondent that he would be cancelling the lease X3 entered into with the plaintiff-respondent.

The plaintiff-respondent thereupon instituted these proceedings on 12.10.82 in the District Court, against the 2nd and 3rd respondents, to have the aforesaid notice X4 declared null and void.

The 2nd and 3rd respondents, in their answer filed in February 1983, admitted the agreement X3, but denied that the agreement X2 was revoked by them. They also admitted the notice X4. They pleaded that the agreement X3 has been cancelled by them with effect from 1.9.82. These respondents further moved that, as the appellant was, by virtue of the aforesaid agreements – dated 23.9.1968, (X1) and dated 10.10.73 – the person entitled to the said land and premises, the appellant should be made a party to the said proceedings.

The appellant himself has, by his application made on 4.5.83, sought to intervene in the said proceedings. The position taken up by him briefly is that the agreement 2, entered into by him with the plaintiff-respondent, is vitiated by fraud and duress on the part of the plaintiff-respondent, and that the lease, X1, entered into by the appellant with the 2nd and 3rd respondents is still valid and operative, and that, therefore, he, the appellant, is entitled to have himself added as a party to the said proceedings under the provisions of sec. 18 (1) of the Civil Procedure Code. The plaintiff-respondent opposed the said application. After inquiry the learned District Judge dismissed the appellant's said application ; and the Court of Appeal has affirmed the said order of dismissal.

The relevant provisions of sec. 18 (1) of the Civil Procedure Code, under and by virtue of which the appellant seeks to be added as a party to these proceedings, which the plaintiff-respondent has instituted only against the 2nd and 3rd defendant-respondents, are as follows :

> "The Court may on or before the hearing upon the application of either party and on such terms as the Court thinks just, order that the name. . . . . be struck out ; and the Court may at any time either upon or without such application and on such terms as the Court thinks just, order. . . . . that the name of any person who ought to have been joined, whether as plaintiff or defendant or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the action, be added".

That the language of sec. 18 of the Civil Procedure Code corresponds with the language of the relevant Rules of the Supreme Court of England, and that guidance could, therefore, be sought from

English decisions upon similar questions has long been accepted by the Courts of this Island ; *Meideen v. Banda* (1) ; *Ponnuthurai et al. v. Nona Bulkies Juhar* (2) ; *The Chartered Bank v. L. N. de Silva* (3).

The English rule, governing the addition of persons as parties to proceedings which have already been instituted in court, was analysed by Devlin, J. in the year 1955, in the Queen's Bench Division in the case of *Amon v. Raphael Tuck and Sons Ltd.* (4). An exhaustive consideration of the earlier authorities on the subject resulted in Devlin, J. concluding that they fall into two groups : those that favour a "narrower construction" and those that have adopted a "wider construction" of the relevant rule regulating the addition of persons as parties to pending proceedings. The "wider construction" was expounded by Lord Esher in the year 1889, in the case of *Byrne v. Browne and Diplock* (5) as follows :

> "One of the chief objects of the Judicature Act was to secure that, whenever a Court can see in the transaction brought before it that rights of one of the parties will or may be so affected that under the forms of law other actions may be brought in respect of that transaction, the Court shall have power to bring all the parties before it, and determine the rights of all in one proceeding. It is not necessary that the evidence in the issues raised by the new parties being brought in should be exactly the same ; it is sufficient if the main evidence and the main inquiry will be the same, and the Court then has power to bring in the new parties, and to adjudicate in one proceeding upon the rights of all the parties before it. Another great object was to diminish the cost of litigation. That being so, the Court ought to give the largest construction to those Acts in order to carry out as far as possible the two objects I have mentioned."

Six years later, in 1895, Lord Esher once again adopted the same construction in the case of *Montgomery v. Foy, Morgan and Co.* (6) in these words :

> ". . . . . where there is one subject-matter out of which several disputes arise, all parties may be brought before the court, and all those disputes may be determined at the same time. . . . . "

The earliest exposition of the "narrower construction" of the said Rule seems to have been in 1877 by Lord Coleridge, C. J., in the case of *Norris v. Beazley* (7) :

> "It seems to me to be correctly argued that those words plainly imply that the defendant to be added must be a defendant against whom the plaintiff has some cause of complaint which ought to be determined in the action, and that it was never intended to apply where the person to be added as defendant is a person against whom the plaintiff has no claim and does not desire to prosecute any."

In *Amon's case (supra)* the plaintiff claimed damages from, and also an injunction against the defendants on the basis : that he invented a new design of adhesive dispenser in the shape of a pen, known as the Fastik pen : that he disclosed the "know-how" of that pen to the defendants in confidence during negotiations between them in regard to the marketing of the pen by the defendants for the plaintiff : that the negotiations failed : that there was an implied contract that the defendants were to treat the information given to them by the plaintiff as confidential : that the defendants have, in breach of such contract, made use of such information to manufacture an adhesive dispenser called the Stixit pen : that the said Stixit pen contained three distinctive features of the plaintiff's Fastik pen. The defendants moved court to join as a defendant D who alleged that he, D., was the inventor of the said Stixit pen, and that the defendants were under contractual obligation to him to manufacture and distribute the Stixit pen in certain territories. After an exhaustive consideration of all earlier English authorities Delvin, J., himself came down on the side of the "narrower construction", formulating the test to be adopted in this way at page 290 :

> "May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights ?"

Having so formulated the test to be employed Delvin, J., proceeded to explain it further thus :

> "It must not be supposed that the test which I have employed can be applied to every sort of application under the rule, and I am not attempting to lay down, or holding that the authorities lay down, a test of universal efficacy. A plaintiff may in the first instance, join as a defendant any person 'against whom the right to any relief is alleged to exist'. . . . . If, after he has issued his writ, he wants to join another defendant, no doubt he will have to proceed under r.

11, but he will not have to show that the new defendant will be directly affected by an order in the action as it is then constituted : what he generally shows is that he cannot get effectually and completely the relief for which he asks unless the new defendant is joined, and that, in that sense, the new defendant is a necessary party to the action. Likewise, a defendant who seeks to join another defendant does not inevitably have to show that the new defendant will be directly affected by an order in the action as it is constituted. He may succeed if he can show that he cannot effectually set up a defence which he desires to set up unless the new defendant is joined with it, or unless the order made binds the new defendant. It is not that the construction of the rule differs according to circumstances. The construction of the rule is and must be, the same in all circumstances ; but the test that is appropriate to determine whether a party is necessary or not may vary according to the circumstances."

At page 287 Devlin, J., also expressed the view that :

"the only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action, and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party."

On an application of the test so formulated by him to the facts of the case before him, as set out earlier, Devlin, J., concluded : that the test has been satisfied : that not only the commercial interests of D., but also his (D's) legal rights would be affected : that he has jurisdiction to make the order : that, having regard to the questions involved in the case, it is proper that, in the exercise of his discretion, he should make the order prayed for.

The decision in *Amon's case (supra)* was followed in 1964, also in the Queen's Bench Division in the case of *Fire, Auto Marine Insurance Co. Ltd., v. Greene* (8), where Stephenson, J., took the view that a person cannot be added as a party against the wishes of the plaintiff unless such person was –

". . . . at least able to show that some legal right enforceable by him against one of the parties to the action or some legal duty enforceable against him by one of the parties to the action will be affected by the result of the action."

The aforementioned constructions placed upon the said rule, regulating the addition of parties in proceedings which are pending, by the English courts have been considered by our courts in several cases. Sansoni, J., had occasion to deal with it in the case of *Ponnuthurai et al. v. Nona Bulkies Juhar et al, (supra)*. The plaintiff in that case instituted an action against two defendants for a declaration of title and for restoration of possession. The 1st Defendant claimed title upon a different chain of title, and the 2nd defendant pleaded a purchase from the 1st defendant. After the case was fixed for trial the intervenient moved to be added on the basis that he was entitled to the land on a separate chain of title and that the title deed relied on by the 1st defendant was a false document. He too moved for a declaration of title in his favour and an ejectment of the defendants from the land. The plaintiff did not object ; and the District Court allowed the intervenient's application. In appeal, Sansoni, J., after a consideration of the judgment of Devlin, J., in *Amon's case (supra)* took the view that, although, if the test formulated in *Amon's case (supra)* were to be applied to the facts of that case on the basis that the plaintiff objects to the application for addition, the intervenient's application must fail as the intervenient, who was not in possession of the land in dispute, would not be affected in the enjoyment of his rights by any judgment that may be given in the action between the plaintiff and the 1st and 2nd defendants, yet, the intervention should be allowed as the plaintiff himself does not object and as there is nothing in the rule which forbids it. The appeal was accordingly dismissed.

The provisions of sec. 18 (1) were also considered by the Supreme Court in October 1964 in the case of *The Chartered Bank v. L. N. de Silva (supra)*. In that case the plaintiff, who had guaranteed a loan from the Bank to the 1st and 2nd defendants, sued the two defendants for the recovery of the sum of money which he had paid to the Bank upon the Bank demanding payment from him as the guarantor of the two defendants. The defendants denied liability on the ground that the Bank had, in breach of certain terms, wrongly called upon the plaintiff to pay. On the date of trial the plaintiff and the two defendants all moved to add the Bank as a party to the action under sec. 18 (1) C.P.C. as the presence of the Bank was necessary "for the complete and effectual adjudication of all matters in the case". The Bank objected ; but the application was allowed by the District Court. In appeal, the order of the learned District Judge was set aside on the

ground that : the cause of action against the defendants was quite different from the cause of action against the Bank : the Bank was undoubtedly a material witness, and the process of the court was available to the parties to compel the Bank to produce the necessary documents : the Bank was not liable to be added as a party. Sri Skanda Rajah, J., referring to the decision in *Amon's case (supra)* observed that the "more restricted interpretation" referred to in that case "has found favour in recent decisions" and that the Indian cases which follow the *Montgomery case (supra)* "can no longer be regarded as expressing the correct interpretation of the provision under consideration". Alles, J., who concurred with Sri Skanda Raja, J. that the Bank should not be joined as a party to the said proceedings, also agreed "that the principle laid down in *Amon's case* and followed in the later decisions should be preferred to the broad generalisation of Lord Esher in *Montgomery's case.*"

A careful study of the judgments delivered in *The Chartered Bank case (supra)* reveals that the decision of the two judges was largely, if not wholly influenced by their view that the English Courts have moved away from the "broad generalisation" of Lord Esher in 1895, and have, in recent times, favoured the "more restricted interpretation" adopted by Devlin, J. in *Amon's case (supra)* and that the views expressed by Lord Esher cannot then be regarded as expressing the correct interpretation of the said rule. The most recent decision of the English Courts, which was cited to us at the hearing of this appeal upon this question – the decision (Denning, M.R. and Diplock, L.J.) in the case of *Gurtner v. Circuit* (9) is one which has been made not only several years later, on 14.12.1967, but is also a decision of the Court of Appeal.

There are two other local decisions which need to be referred to. One is the decision in the case of *Weerapperuma v. De Silva* (10) decided on 28.7.58 in which Basnayake, C.J. formulated the principle thus :

> "When a question is so inextricably mixed with the matters in dispute in an "action" as to be inseparable from them and the action itself cannot be decided without deciding it, the question may be said to be involved in the action. Any question arising on the case set up by an intervenient in his petition and not arising in the case set up in the pleadings of the parties is not a question involved in the action."

The other is the case of *G. A., Kalutara v. Gunaratna* (11). A co-owned land had been used by all the co-owners for several years as a distillery and a warehouse for manufacture of arrack ; and, when one of the co-owners brought an action against the Government Agent to restrain him from issuing or renewing a licence to manufacture arrack in favour of S, another co-owner, alleging that the Government Agent and S were acting in concert wrongfully and unlawfully, S was held to be entitled to be added as a party to the said proceedings instituted against the Government Agent. Manicavasagar, J. based the decision to permit the addition on the fact that there was also a claim for relief which would affect S in the enjoyment of his legal rights.

The local decisions in the case of *Weerapperuma (supra)*, decided on 28.7.58, *Ponnuthurai (supra)* decided on 21.12.59, *The Chartered Bank (supra)* decided on 6.10.64 and *G. A. Kalutara (supra)* decided on 19.3.67, could all be considered as having preferred the "narrower construction" placed upon the Rule regulating the addition of parties in pending proceedings in England. Even so, Sansoni, J. allowed the addition in *Ponnuthurai's case (supra)* as the plaintiff himself did not object, and as there was nothing "in the rule which forbids it" ; and Manicavasagar, J. in the case of the *Government Agent of Kalutara (supra)* observed that the ground, on which the addition was in fact being allowed in that case, was :

> "not the only rule which would enable the Court to act under sec. 18."

In *Gurtner's case (supra)* the plaintiff, who had been severely injured on being run down by the motor cycle ridden by the defendant, sued the defendant for damages. When the plaintiff issued writ against the defendant, the defendant was found to have gone to Canada about three years previously. The defendant's insurers could not also be found. Thereafter, upon substituted service being effected on the defendant, the Motor Insurers' Bureau, which had entered into an agreement with the Minister of Transport in 1964 that, if a judgment entered in favour of an injured person against a motorist is not satisfied in full within seven days, the Bureau would pay the amount of the judgment to the injured person, applied to be added as a defendant. The Court of Appeal, which was called upon to consider whether the said Bureau could be added as a defendant in the said proceedings, held that the said Bureau should be added as a

defendant on its undertaking to pay any damages that might be awarded to the plaintiff. Denning, M.R. was not disposed to accept the "narrower construction" advocated by Devlin, J. in *Amon's case (supra)* and followed by Stephenson, J. in the *Fire, Auto Marine Insurance Co. case (supra)* but preferred to place the "wider construction" which had found favour with Lord Esher in *Byrne v. Browne (supra)* – and also later in the *Montgomery's case (supra)*. Said Denning, M.R. at page 332 :

> "It seems to me that, when two parties are in dispute in an action at law and the determination of that dispute will directly affect a third person in his legal rights or in his pocket in that he will be bound to foot the bill, then the Court in its discretion may allow him to be added as a party on such terms as it thinks fit. By doing so the court achieves the object of the rule. It enables all matters in dispute 'to be effectually and completely determined and adjudicated upon' between all those directly concerned in the outcome."

Diplock, L.J., who too agreed that the intervenient, the Motor Insurance Bureau, should be added, took the view that neither the test adopted by Devlin, J. in *Amon's case (supra)* nor that adopted by Stephenson, J., in the *Fire, Auto, Marine Insurance case (supra)* should be treated as comprehensive. Devlin, J. approached the question from the standpoint of the observance of the principles of natural justice : that the Bureau s obligation, though not enforceable by the plaintiff, was, however, enforceable by the Minister who was himself not a party to the action : that the rules of natural justice require a person, who is to be bound by a judgment in an action brought against another party and liable to the plaintiff on the judgment, should be entitled to be heard in the proceedings in which the judgment is to be obtained : that a matter in dispute is not effectually and completely "adjudicated upon" unless the rules of natural justice are observed and all those who will be liable to satisfy the judgment are given an opportunity of being heard ; and concluded that :

> "So long as the judgment is legally enforceable against the person sought to be added either directly by the plaintiff or indirectly for his benefit by the Minister, the court has jurisdiction to add such person as a party".

Devlin, J. emphasised that his judgment is based on the special position of the Bureau under their contract with the Minister, and is not intended to have any wider application than to that unique legal situation.

Gurtner's case (supra) does not seem to have been brought to the notice of the Court of Appeal ; for, it has not been considered in the judgment of the Court of Appeal.

On a consideration of the respective views, referred to earlier, which have been expressed by the English Courts in regard to the nature and the extent of the construction to be placed upon the rule regulating the addition of a person as a party to a proceeding which is already pending in court between two parties, the "wider construction" placed upon it by Lord Esher, which has been set out above, commends itself to me. The grounds which moved Lord Esher to take a broad view, viz. : to avoid a multiplicity of actions and to diminish the cost of litigation, seem to me, with respect, to be eminently reasonable and extremely substantial. Lord Esher's view, though given expression to almost a century ago, is, even to-day, as constructive and as acceptable. The plaintiff is undoubtedly the dominus litis and should not lightly be made to battle it out with one whom he himself did not choose to be his adversary in the proceeding he initiated. Even so, the situation which is brought about by the said rule being made operative in this manner will not cause prejudice to the plaintiff. On the contrary it could and would enure to his benefit.

The plaintiff-respondent has, in the plaint dated 12.10.1982, averred that the appellant, who had entered into the agreement X1 with the 2nd and 3rd respondents, on 4.4.76 entered into the agreement X2 with the plaintiff-respondent : that, after the plaintiff-respondent paid all the arrears that were due from the appellant under the said agreement X1, the appellant, and the appellant's wife and children, on 10.10.79, requested the 2nd respondent to transfer the land and premises in question to the plaintiff respondent : that, in pursuance of such request, the 2nd respondent then cancelled the agreement, which the 2nd respondent had earlier entered into with the appellant, and, on 1.6.80, entered into the agreement X3, with the plaintiff-respondent : that the 2nd and 3rd respondents have sent the plaintiff-respondent the notice X4 because the appellant is said to have sought to withdraw the consent,

which the appellant had given to the transfer of the said land and premises to the plaintiff-respondent, on the basis that such consent had been given under duress : that the appellant has made the said application three years after he had given his consent in October 1979 : that the respondent's conduct in acceding to such a request is most unfair.

The basis of the plaintiff-respondent's claim is therefore : that the 2nd and 3rd respondents had executed a transfer of the land and premises which the appellant was entitled to, in his name, with the consent of the appellant : that the said respondents are now seeking to cancel the said transfer, in view of certain representations which are said to have since been made by the appellant : that such representations should not be accepted by the said respondents. Although the plaintiff-respondent had in his prayer to the plaint prayed for the execution of a deed of transfer in his name upon the payment by the plaintiff-respondent of any balance sum of money due to the 2nd and 3rd respondents from the appellant, and in the alternative, for payment of a sum of Rs. 150,000 to the plaintiff-respondent as compensation, yet, at the inquiry held on 9.5.83 before the learned District Judge, learned Counsel for the plaintiff-respondent withdrew the claim for such relief and confined the relief prayed for to that set out in paragraph (*a*) of the prayer to the plaint viz. : a declaration that the notice X4 is null and void. The basis even for this claim for relief is, as set out earlier, that the agreement, which had been entered into between the appellant and the 2nd and 3rd respondents, has been cancelled, and, in its place, another agreement has been entered into between him and the 2nd and 3rd respondents at the express request of, and with the consent, fully and freely expressed, of the appellant.

The 2nd and 3rd respondents admit that they did enter into the agreement X3, of 1.6.80, with the plaintiff-respondent at the request of the appellant, but they do not accept that the agreement, X1, which they had earlier entered into with the appellant has been cancelled. They also plead : that X3 has since been cancelled on 1.9.82, and that the plaintiff-respondent has no cause of action against the said respondents : that, in view of the agreement the 2nd respondent had entered into with the appellant in 10.10.73, the appellant should be made a party to these proceedings.

Although the plaintiff-respondent has in his plaint averred that the said agreement, X1, which the 2nd and 3rd respondents had entered into with the appellant was cancelled, the 2nd and 3rd respondents

have, in their answer, repudiated the said plea. The appellant has himself, in his petition and affidavit praying for intervention, specifically pleaded that the original agreement entered into between him and the 2nd and 3rd respondents has not been cancelled and is still in force.

There is no admission or other evidence to establish that either the agreement X1, and/or the agreement said to have been entered on 10.10.73 between the 2nd and 3rd respondents and the appellant, has been cancelled. The Court of Appeal had misdirected itself in taking the view that the lease entered into by the appellant with the 2nd respondent was revoked at the instance of the appellant.

The agreement X3, upon the basis of which the plaintiff-respondent claims relief, viz : the declaration set out in paragraph (a) of the prayer to the plaint, is, on his own pleadings, founded upon the consent, which, the plaintiff-respondent avers, was fully and freely expressed by the appellant both to the cancellation, by the 2nd and 3rd respondents, of the agreement, which the appellant had earlier entered into with the 2nd and 3rd respondents, and to the 2nd and 3rd respondents thereafter entering into the agreement, X3, with the plaintiff-respondent. The 2nd and 3rd respondents accept the position that it was at the request of the appellant that X3 was entered into with the plaintiff-respondents, but maintain that the earlier agreement with the appellant was never revoked and that the person, who is entitled to the said land and premises still is the appellant. The appellant too maintains that he is still the owner of the said premises, and that his consent was obtained by the plaintiff-respondent by duress. On a consideration of the issues that would arise for adjudication upon the pleadings filed by the plaintiff-respondent and the 2nd and 3rd respondents respectively, paying due regard, at the same time, also to the position taken up by the appellant himself it seems to me that any decision in these proceedings upon the question whether the plaintiff-respondent is the person now entitled, in law, to the land and premises - an answer to which question is a pre-requisite to the grant of a declaration as is prayed for by the plaintiff-respondent – will not be a final solution unless and until the appellant himself can be held to be bound by such decision. Furthermore, the issue relating to the validity of the consent said to have been expressed by the appellant, and upon which the 2nd and 3rd respondents had entered into whatever dealings they have had with the plaintiff-respondent, cannot be effectually decided in the absence of the person whose act

is being so considered. The validity of such consent cannot, in view of the allegations made by the appellant, be resolved by merely calling the appellant as a witness. Affording the appellant merely the role of a witness will not be adequate for a full and fair determination of the issue relating to the validity of the consent which alone had brought the 1st and 2nd respondents to negotiate the agreement X3 with the plaintiff-respondent. Any decision of these issues in a proceeding, to which the appellant is not a party and by the decision of which he will not be bound, will not effectively and finally settle the issue of who is the person now entitled, in law, to the said land and premises. The plaintiff-respondent would have to face the appellant sooner or later before his rights can be finally and effectively determined. The facts and circumstances relating to this matter are, therefore, such that the application of the "wider construction", referred to above, makes, in my opinion, a decision in favour of the appellant the only logical conclusion.

A consideration of the various tests formulated in the course of the decisions, referred to earlier, which have adopted the "narrower construction" seems to me to indicate that the facts, and circumstances relevant to this question could even satisfy a few of the tests so adopted. For instance : the view expressed by Devlin, J., in *Amon's case (supra)* that "the only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action" : the view expressed by Stephenson, J., in *Fire Auto Marine Insurance case (supra)* that the party to be added must be able at least "to show that some legal right enforceable by him against one of the parties to the action . . . . will be affected by the result of the action" : the view expressed by the Basnayake C. J. in *Weerapperuma's case (supra)* that a question is involved in the action "when a question is so inextricably mixed with the matters in dispute . . . . as to be inseparable from them and the action itself cannot be decided without deciding it ", and that "any question arising on the case set up by an intervenient in his petition and not arising in the case set up in the pleadings of the parties is not a question involved in the action", may all be satisfied by the appellant in this case.

The order of the District Court, dated 9.5.83, and the judgment of the Court of Appeal, dated 11.5.84, are, therefore, both set aside.

The application of the appellant made to the District Court is accordingly allowed ; and the appellant is directed to be made a party-defendant to the action instituted in the District Court by the plaintiff-respondent against the 1st and 2nd respondents.

The appellant is entitled to the costs of the inquiry held before the District Court, and also to the costs of appeal, both in the Court of Appeal and in this Court.

SHARVANANDA, C. J. – I agree.
ATUKORALE, J. – I agree.

Appeal allowed.