1942 *Present :* **Howard C.J. and de Kretser J.**

ARUMOGAM *v.* VAITHIALINGAM.

17—D. C. (Inty.) Jaffna, 16,669.

Intervention of parties—Action on mortgage bond—Claims to money lent by third parties—Right to intervene—Civil Procedure Code, s. 18.

Plaintiff sued to recover money due on a mortgage bond, in which it was stated that he was lending his daughter's money. The defendant admitted the debt, but alleged that there were other claimants to the money and asked the Court to decide to whom he should pay it.

Persons, alleging to be heirs of plaintiff's daughter, sought to intervene in the action.

Held, that the parties should not be added under section 18 of the Civil Procedure Code.

APPEAL from an order of the District Judge of Jaffna.

N. Nadarajah, K.C. (with him *V. K. Kandasamy*), for plaintiff, appellant.

P. Navaratnarajah, for intervenient respondents.

Cur. adv. vult.

July 13, 1942. DE KRETSER J.—

The plaintiff lent the defendant money on a mortgage bond and now seeks to recover it. The defendant admits the debt and professes his willingness to pay it but alleges there are counter-claimants and asks the Court to decide whom he should pay it to. He has not brought the money into Court and has gained quite a long extension of time already. Some minors claiming the money seek to intervene through a next friend and the trial Judge has ordered that they be added as defendants, purporting to act under section 18 of the Civil Procedure Code. Before us, Counsel for respondents did not rely on this section but referred us to section 472, which clearly has no application. We reserved judgment in order to consider the application of section 18, whereupon respondent's Counsel referred us to page 1111 of *Chitaley on the Indian Code*, where a long list of cases is given. Clearly none of them apply or Counsel would have cited to us the case which did.

It is essential in the first place to remember that this is an action based on contract and the only contracting parties are the plaintiff and the defendant. In the bond, plaintiff went out of his way to allege

[1] *42 N. L. R. p. 317.*

that he was lending his daughter's money and it is his daughter's heirs who seek to intervene. Plaintiff alleges he has paid his daughter and that the money is his. The only dispute is between the plaintiff and these heirs and that dispute will not arise in this action unless and until they intervene. It is not a question involved in the action until then, and in fact it arises from a separate cause of action.

It might be convenient to settle the dispute now but there are also dangers and difficulties in allowing them to come in. The Court is not obliged to let them in and in exercising its discretion it ought to consider all aspects of the matter. It is not alleged that the plaintiff is not solvent nor is it clear whether a dispute may not arise as to whether the would-be intervenients are the heirs or the sole heirs of the plaintiff's daughter.

The defendant has not brought the money into Court, and delay may spell loss to both claimants. In any case, is the section applicable? If it is, one may have the case of a landlord suing his tenant for rent. The tenant cannot dispute his landlord's title. but third parties may seek to come in on the ground that they are the real owners of the property and so a simple action for rent may be converted into á case for settling title to property, not among two but possibly more claimants.

The answer to the question seems to be that in an action on a contract extraneous matters ought not to be allowed to come in but only some matter directly arising from the contract itself and quite subsidiary to it.

Let us, however, examine the authorities. The trial Judge relies on the case of *Meideen v. Banda*[1], decided in 1895. Of the three Judges who heard the appeal, Lawrie A.C.J. disagreed with the other two and said: "Between the parties to the action there is no contest; no question 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 Walarappa's application be refused." Browne J. gave other reasons. one of them being that defendant might otherwise be exposed to two actions. Withers J., with some diffidence, allowed the intervention, but stated that he had not come across any instance in the English Courts where a party who might have been brought in on an interpleader had been added at his own instance, and that apparently Indian cases were against the application. He purported to act on a statement by Lord Esher on a corresponding section in the English Statute. Lord Esher said it should be given a wide application and that it would be enough if the main part of the inquiry would be the same.

It will be seen that the decision in the case of *Meideen v. Banda* (*supra*) was not only the earliest one on section 18 but went on the particular facts of the case. There the mortgagee's rights had been sold under writ to Walarappa Chetty and assigned privately by the mortgagee, Meideen, to the plaintiff. Both claimed on the same contract against the same defendants and the question was, who had stepped into the mortgagee's shoes. Withers J. said that the *main* inquiry would 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 to dispose of it. That would be the main question theoretically and it was so in fact

[1] *1 N. L. R. 51.*

since the defendant had disclosed the existence of a counter-claimant. There had been no deposit. Browne J. thought that defendants should be required to deposit the amount due. In fact, *decree nisi* had been entered against all the defendants, even against those admitting the debt.

Coming to later times, we get the case of *Raman Chetty v. Shaw*[1]. There one Raman Chetty, clearly indicating he was an agent by prefixing the Chetty firm's initials to his name, sued on a promissory note. On objection being taken as to the action being maintainable, the principal sought to intervene. The trial Judge allowed the application as removing all possible doubt as to who was entitled to the money. The proceeding would seem to preclude multiplicity of actions, to save costs, to allow the Court finally to decide matters. Garvin J. refused the application as the presence of the principal was not necessary to supplement and complete the right of the plaintiff to sue in respect of the cause of action averred nor for the final determination of the matters in dispute between Raman Chetty and the defendants. Maartensz J. agreed in a separate judgment that Raman Chetty's right was complete in itself on the contract.

In *Thangamma v. Nagalingam*[2], an action on a mortgage bond, Soertsz J. refused the application of a person to intervene on the ground that he had an interest in the action as he had seized the property mortgaged under writ and the action was a collusive one intended to defraud him. Soertsz J. said he was not a necessary party for the effectual and complete adjudication of the questions involved in the case: he had nothing to do with the questions involved in the action between the plaintiff and the defendant. Hearne J. agreed. In *Olagappa Chettiar v. Keith*[3], the Court refused an intervention, Soertsz J. remarking that though the words of section 18 were very wide they must be interpreted in relation to and subject to sections 14 and 17 and no new cause of action ought to be brought indirectly.

Turning to English cases we get *Montgomery v. Foy, Morgan & Co.*[4] There the contract was one of affreightment under one bill of lading. All the disputes were concerned with that one contract, the bill of lading given by the plaintiff to the British Saw Mills Company. That company, as the shipper of the goods, was liable eventually to pay the freight. On the ship's arrival in London there was no one to take delivery of the cargo and the master of the ship placed them in the custody of a certain company, as he was entitled to do, giving them notice of his lien on the goods for his freight. The defendants as agents and consignees for sale for the British Saw Mills Company deposited the freight and took delivery. The plaintiff then brought this action, claiming a declaration of lien and that the money be paid to them. The British Saw Mills Company had a claim to make against plaintiff for short delivery and damage to the goods and sought to intervene. Lord Esher pointed out that though the plaintiff had a claim to the freight, that claim was subject to the claim in respect of damage from an alleged breach of contract and one trial

[1] *33 N. L. R. 16.*
[2] *39 N. L. R. 143.*
[3] *43 N. L. R. 491.*
[4] *73 Law Times 12.*

would enable the Court to decide all "questions involved in the cause or matter". Kay L.J. pointed out that the freight eventually came out of the pockets of the shippers, the British Saw Mills Company, and the plaintiff objected to their being added because the Company had a claim which might reduce the amount they would pay. Smith L.J. went on similar grounds. The party seeking to come in was in fact one of the persons directly concerned and in a case on the contract on which the case was founded would ordinarily have been the party sued.

It will be noted in passing that in the English Statute the words are "questions involved in the cause or matter" and the words of section 18 are "questions involved in the action". In *Byrne v. Browne*[1], relied on by Withers J., Lord Esher said: "Although it may be necessary to go into some subsidiary questions between the parties who are brought in and the original parties, which would not have arisen in the original action, if the main inquiry is the same as regards all the parties, the main part of the evidence will be the same; and so another great principle of the *Judicature Acts,* the diminishing of the costs of litigation, will be carried out".

That was an action by a lessor against the assignee of the executors of the lessee, for damages. Defendant moving and plaintiff not objecting, the executors of the lessee were added as defendants in order that they might call upon the assignee (thought not to be liable on the contract itself since assigns were not mentioned) to indemnify the executors. The executors consented to being added. The assignee did cause the alleged damage and would eventually have to pay the executors; *i.e.,* he was not being made subject to a new liability. Emphasis was laid in the judgments on the fact that all the other parties consented and to the fact that the assignee could not possibly be hurt by being joined.

I do not refer to earlier cases as they took a more restricted view of the provision in the Statute.

Now, there is no doubt that section 18 should be liberally interpreted but that must be done on some principle. Earlier decisions in England seemed to say that the plaintiff should consent to the intervention. That view is not now held. But in all the cases the questions arose from the contract itself and the main body of evidence would apply whether the questions were tried in one action or in separate actions.

Suppose, in the case before us, the plaintiff had omitted to state the source of his supply (a matter of evidence really), would it be open to some third party, say a Bank, to come in and say he was the supplier of the money and so ought to be allowed to intervene and recover it? I think the answer is clearly in the negative, and I do not see that a different principle applies in this case. If the intervention be allowed, then quite a separate matter will become the main subject of inquiry, in fact the sole matter of inquiry. The intervenients can establish their rights in a separate action quite as conveniently and the cost to them will be exactly the same. The only person likely to benefit by the intervention is the defaulting defendant.

[1] *60 Law Times 651.*

In my opinion, the order made in the Court below is wrong.

This appeal is allowed and the intervention dismissed, the next friend of the intervenients paying the costs of this appeal and of the proceedings in the Court below.

HOWARD C.J.—I agree.

Appeal allowed.