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Article 10

Pleading: Joinder of Parties

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landlord upon notice to the tenant that that it is for he latter's benefit and to minimize the damages, and that the landlord does not relinquish his claim to the rent.[9]

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Pleading: Joinder of Parties.

Ernest v. *Schmidt,* 227 N.W., Vol. 1, page 26 (advanced sheets).

The decision of the Wisconsin Supreme Court on the rehearing of *Ernest* v. *Schmidt* implies an interesting analysis of Sec. 263.04 of the Wisconsin Statutes of 1927 which provides that all causes of action stated in a complaint must effect all of the parties to the action. The court reverses their edict on the first hearing of the same case, *Ernest* v. *Schmidt,* 223 N.W. 558; but before dwelling on the reversal it would be well to review the facts brought out in the first hearing.

The defendants were stockholders in The Elmwood Company, engaged in the development of certain land in Texas. The corporation ran short of funds, and the defendants besought the plaintiff to lend them money in order that they might continue the project. The agreement stated among other things that in consideration for such loan the defendants would become individually liable for the amount of $11,500, and that each of them would pay his pro rata share of $11,500 plus interest if the plaintiff was forced to buy up the land to protect his loan.

The defendants issued a trust deed on all their real estate to secure $30,000 in notes. When these notes fell due, the defendants being unable to pay, the trustees foreclosed on their deeds and put the land up for public sale. The plaintiff forced to bid in at the sale to protect his loan, to which effect he notified the defendants. Receiving no reply he organized a corporation to buy up the land, the plaintiff himself becoming the owner of 233 ½ of 500 shares of no par value capital stock which represented an ownership in the land sufficient to cover the loan made to the defendants. When the plaintiff offered the stock certificates to the defendants, they refused to take them, and he sued on the written agreement joining the subscribers as defendants. The defendants demurred on the ground of sec. 263.04 "that the causes of action in a complaint must effect all the parties," and that as the agreement created a several obligation, the plaintiff would have to proceed against them separately. The Supreme Court at this time decided to sustain the demurrer, explaining that due to the indefiniteness of the complaint and the doubtful intent of the agreement, to allow a joinder of parties would mean the emasculation of Sec. 263.04.

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[9] *Welcome* v. *Hess,* 90 Cal. 507, 27 Pac. 369.
Higgins v. *Street,* 19 Okla. 45, 92 Pac. 153, 14 Ann. Cas. 1086.

On rehearing the case, however, the court reversed its decision and held that the defendants could be jointed in the same action according to Sec. 260.17 which says, "Parties severally liable on the same instrument, of obligation . . . . may all or any of them be joined in the same action at the option of the plaintiff. . . . ." This did not give its reasoning in preferring the above statute over 263.04, but *De Groot* v. *Peoples Bank,* 183 Wis. 594, seems to give us a clue to the rule followed by the court.

The decision in this case hinged on the validity of a chattel mortgage and the interpretation of a statute which provides for the joinder of defendants on different causes of action where there is a possibility of alternative relief, although recovery against one is inconsistent as against the other. The plaintiffs sued the defendant vendors on the breach of an implied warranty and in the same complaint they joined the defendant bank on a cause of action for the enforcement of an alleged invalid chattel mortgage against them. Defendants demurred to the complaint on the ground of Sec. 2647 (now 263.04). But the Supreme Court ruled against them maintaining that the complaint was sufficient under Sec. 2603 (1927 Stats. 260.11).

Justice Owen in discussing the apparent contradiction of the two sections, gives the following interpretation:

"Both sections were placed in their present form by chap. 219, Laws of 1915. No recent act has gone so far in banishing technicalities, liberalizing court procedure, and providing a short cut for the administration of justice. It broadens the scope of Sec. 2647 by striking out the specifications of causes of action that might be united and made it applicable to all causes of action. It expressly added to Sec. 2603 the provision that 'a plaintiff may joint as defendants persons against whom the right of alternative relief is alleged to exist, although the recovery against one is inconsistent with recovery against the other.' These quoted words might as well have been omitted if the causes of action so united must effect all the parties to the action.

"Chap. 219 of the Laws of 1915 was decided and affirmative effort in the interests of simplified and direct judicial procedure. It should be construed so as to promote rather than to defeat that purpose. Sec. 2603 deals with limited causes of action, those in which alternative relief may be demanded. Upon familiar rules of construction its provisions must prevail with reference to such special causes over the more general provisions of Sec. 2647. This does not emasculate Sec. 2647. It is believed that this construction gives full force to the legislative intent."

Now then, to return to *Ernest* v. *Schmidt*[1] and the application of 206.17 (Sec. 2609, Laws of 1915). Cannot we substitute it in the above opinion for Sec. 2603? If there can be a joinder of parties where the recovery against one is inconsistent with recovery as against the other, why cannot there be a joinder of the defendants? Cannot Sec. 260.17 be classed with Sec. 260.11 The decision on the rehearing of *Ernest* v. *Schmidt* seems to answer these questions in the affirmative; and when looking at in in conjunction with the opinion in *De Groot* v. *Peoples Bank* the rule as apparently laid by the Supreme Court, is that Sec. 263.04 is a general statute applying to all cases where relief is sought and the obligations of the charged parties are not as defined by Sec. 260.11 and Sec. 260.17.

FRANCIS ACKERMAN

Pledges: Pledge Agreements: Jury Questions.

In the action of *Rezash* v. *Bank of Two Rivers*[1] the appellant desired to recover of the respondent bank $7,000 and interest alleged to have been lost by the negligence of the bank in its handling of a security of appellant pledged to the bank.

Appellant on August 15, 1925, delivered to the bank, as collateral security for a line of credit extended by the bank to him, an interim receipt from an investment house in Chicago, by which the investment company undertook to deliver to the appellant $7,000 worth of specified building bonds. The bank at the same time prepared a pledge agreement describing the collateral, and, as the interim receipt expressly provided that it was to be surrendered on delivery of the bonds, incorporated in the pledge agreement an authorization to the bank to surrender the interim receipt for the *permanent* bonds,—which appellant signed. The bank requested no other or further authority than what it incorporated in the pledge agreement.

The whole transaction was for the benefit of the appellant. The bank received no consideration because of it.

By the terms of the interim receipt, the said investment company undertook to deliver $7,000 worth of the specified building bonds, "when as and if received in definite form". The bank concededly never made an inquiry to ascertain when the bonds became available in a deliverable state. The uncontroverted fact was that the bonds had been put into a deliverable state August 1, 1925, by the common modern device of trustee's interim certificates and that practically all of the seven million dollar issue was in the first instance sold and delivered in that form;

[1] 227 N.W. Vol. 1, p. 26 (advance sheets).
[1] 227 N.W. 4; — Wis. —.