1942 *Present :* **Howard C.J. and Hearne J.**

NAMASIVAYAM *v.* KARTHEY.

289—D. C. Jaffna, 14,763.

Court of Requests—Failure to enter a claim in reconvention—Distinct and separate cause of action—Meaning of expression "for a like cause"—Civil Procedure Code, s. 817.

The defendant in an action in the Court of Requests is bound to make a claim in reconvention on a distinct and separate cause of action in his favour in order to prevent such claim being barred by section 817 of the Civil Procedure Code.

The words "for a like cause" do not mean "for a matter arising out of the same cause".

***Perera v. Silva* (13 N. L. R. 339), followed.**

***Perera v. Pesonahamy* (15 N. L. R. 438) and *Marimuttupullai v. Suppiahpulle* (42 N. L. R. 326), not followed.**

APPEAL from a judgment of the District Judge of Jaffna.

N. E. Weerasooria, K.C. (with him *H. W. Thambiah*), for the plaintiff, appellant.

N. Nadarajah for the defendant, respondent.

Cur. adv. vult.

January 13, 1942. HOWARD C.J.—

This is an appeal from a decision of the Additional District Judge of Jaffna dismissing with costs the plaintiff's action in respect of a promissory note dated June 13, 1935, to pay the sum of Rs. 250 with interest at 12 per cent. per annum. On August 27, 1936, the defendant instituted in the Court of Requests against the plaintiff and his wife an action for the recovery of Rs. 72 in respect of money borrowed from the plaintiff. In this case which was dismissed, the plaintiff in the present case failed to enter a claim for reconvention in respect of the amount due on the promissory note that is the subject of this action. The learned Judge has held that, by virtue of section 817 of the Civil Procedure Code, the plaintiff was barred from putting the note in suit in a subsequent action. Section 817 is worded as follows :—

> "Where the defendant in an action for breach of a contract neglects to interpose a claim in reconvention consisting of a cause of action in his favour for a like cause, which might have been allowed to him at the trial of the action, he and every person deriving title thereto through or from him are for ever thereafter precluded from maintaining an action to recover the same."

Our attention has been invited to previous decisions of this Court. In *Perera v. Silva*[1]. A recovered judgment against B in the Court

[1] *13 N. L. R. 339.*

of Requests for advances and expenses made and incurred by A on an undertaking by B to lease certain property. B failed to claim in reconvention the amount due to him from A on an on demand promissory note for less than Rs. 300. In an action by B in the Court of Requests against A on the note it was held by Grenier J. that the claim was barred under section 817. On the other hand in *Perera v. Pesonahami*[1] it was held by de Sampayo A.J. that the defendant in an action is not bound to make a claim in reconvention on a distinct and separate cause of action. In an action by the mortgagor to have the bond cancelled and discharged on the ground of payment, the mortgagee succeeded on the issue of payment and the action was dismissed. A subsequent action brought by the mortgagee on the bond was held not to be barred by the first action. There is, therefore, a conflict of judicial opinion. In this connection it would appear that Grenier J's decision in *Perera v. Silva* was not brought to the notice of de Sampayo J.

The matter has recently come up for consideration in the case of *Marimuttupullai v. Suppiahpulle*[2]. In this case the plaintiff instituted an action against the defendant in the Court of Requests, Badulla, for goods sold and delivered. The defendant had previously sued the plaintiff in the Court of Requests, Nuwara Eliya, for moneys lent to him on three occasions and also for the value of some cabbages. The plaintiff had failed to make the present claim in reconvention in the Nuwara Eliya case. De Kretser J., after giving due consideration to the meaning of the words "for a like cause" which appear in section 817, held that the bar placed by section 817 of the Civil Procedure Code upon a defendant who fails to interpose in the action a claim in his favour against the plaintiff does not operate when the Court has no jurisdiction to entertain the claim. In coming to this conclusion de Kretser J. was faced with the conflict of judicial opinion in the two other cases I have cited. In interpreting the meaning to be given to the words "for a like cause" he stated that he inclined to the view that it was intended that once a contract came before the Courts then all questions arising from that particular contract should be settled in one case. He failed to see why the plaintiff should be allowed to plead the breach of a single contract and defendant be required to interpose a claim he had on any other contract and why, if a defendant were required to interpose a claim he had on any other contract, he should not also be required to interpose any kind of claim he had against the plaintiff on any cause of action irrespective of whether it arose for breach of contract or not. I agree with de Kretser J. that section 817 restricts the ordinary right of a litigant to decide for himself whether he should make a claim in reconvention or not. But the section is no doubt intended to avoid multiplicity of actions. Public policy requires the speedy settlement of disputes that arise between parties. I do not think that in these circumstances there is any principle of law requiring the Courts to give the section a restrictive interpretation. Moreover it is impossible to reconcile the interpretation which has been given to the section by de Kretser and de Sampayo JJ. with the plain meaning of the words "for a like cause". It is straining the meaning of these words

[1] *15 N. L. R. 438.*

[2] *42 N. L. R. 326.*

to interpret them to mean "for a matter arising out of the same cause". In these circumstances I prefer the interpretation given to these words by Grenier J. in *Perera v. Silva*[1] to that of de Sampayo and de Kretser JJ. in the other two cases I have cited.

Our attention was also invited to the case of *Silva v. Perera*[2] which Counsel for the appellant contends supports his argument. There is, however, nothing in the judgments of the learned Judges who decided this case to justify this point of view. The question for decision was whether the defendant could put forward a certain claim in reconvention. In holding that the District Judge was right in rejecting this claim, Lascelles C.J. stated that the Civil Procedure Code did not remove the limitations which existed under the Roman-Dutch law as stated in *Kotze's Van Leeuwen, Vol. II., p. 410,* as follows :—

> "The thing claimed in reconvention must be of the same right, kind, and quality as the matter claimed in convention, because they are as it were set off and extinguished by compensation against each other, which cannot take place in things that are in any way dissimilar."

The Chief Justice goes on to refer to a statement of Bonser C.J. in *Babapulle v. Rajaratnam*[3] that he was not aware of any authority for the proposition that a claim in reconvention must arise out of or be closely connected with the original claim and states that there is nothing in this expression of opinion inconsistent with the limitations laid down by Van Leuwen. De Sampayo J. also states as follows :—

> "The claim in reconvention need not, of course, be based on, or connected with, the transaction or matter out of which the plaintiff's cause of action arises, but it seems to me that it should in its nature be capable of being set off against, or adjusted with, the plaintiff's claim."

It has been further urged that the claim in the Court of Requests case was against the plaintiff and his wife jointly and hence the former could not put forward his claim on the note in reconvention. I am of opinion that this fact would not bar the plaintiff putting forward his claim in reconvention. Whatever he recovered would be set off against half the amount recovered by the defendant on the claim against his wife and himself. The Court could have pronounced a final judgment in the same action both on the original and on the cross-claim as required by section 75 (*e*) of the Civil Procedure Code. For the reasons I have given, the appeal is dismissed with costs.

HEARNE J.—I agree.

Appeal dismissed.

[1] *13 N. L. R. 339.*

[2] *17 N. L. R. 206.*

[3] *5 N. L. R. 1.*