

PEERIS *et al.* v. WEERASOORIA.

*D. C., Galle, 3,161.*

*Bailment—Right of bailor to sue bailee though not solely entitled to property bailed—Misjoinder.*

1896.  
July 17

A entrusted to defendant certain clothes and jewellery for safe keeping. The property belonged to the estate of A's late wife, who had left two minor children as her heirs. A and the minor children joined in an action to recover the property from defendant—

*held*, that although the minor children had an interest in the property, they were improperly joined as plaintiffs. The contract between A and defendant was an ordinary contract of bailment, and A alone could maintain an action against the defendant for the recovery of the property. Defendant could not in such action deny A's title.

THE facts of the case appear in the judgments.

*Dornhorst*, for appellant.

*Cur. adv. vult.*

17th July, 1896. LAWRIE, J.—

This is an action by a man for the recovery of his late wife's clothes and jewellery, which the plaintiff says he entrusted to the defendant for safe keeping. It was quite unnecessary to make the plaintiff's minor children co-plaintiffs. Their names should be struck out (section 18 of the Code). The property may be theirs in whole or in part, but the action is laid on a contract of

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bailment between the plaintiff and the defendant on an express obligation by the defendant that he would return the box when called on. The bailor has a title to sue, and the bailee is not permitted to deny his title (14 of 1895, section 117).

I do not appreciate the error or defect which the District Judge discovered in the plaint.

The plaintiff, as guardian *ad litem*, has not taken out a certificate of curatorship, but that is not necessary (*see Uduma Lebbe v. Seyadu Ali, D. C., Kurunegala, 857, 1 N. L. R. 1*).

The appellants to have his costs of appeal.

WITHERS, J.—

This judgment is clearly wrong, and must be set aside. The action purports to be by one Mayonis Peeris and by Nancy Ellen Peeris and Silian Thracia Peeris, as minors represented by him (first plaintiff) as their next friend.

The object of the action is to recover from defendant certain personal property which the plaintiff and his children are said to be entitled.

According to the plaint, plaintiff entrusted defendant with the property specified in the plaint for safe keeping. When he asked the defendant to restore the property to him, the defendant refused to do so, and she keeps the articles. That in itself discloses a very good cause of action by the plaintiff against the defendant of detaining property entrusted by him to defendant.

I do not quite see why the minors were joined, because they were not parties to the contract of deposit by plaintiff to the defendant.

Two reasons given by the District Judge in support of his judgment are—one, that the minors are not properly represented in this plaint, but he admits that that defect is easily cured by amendment. The defect is not quite clear to me.

The other reason is, that before the plaintiff sued to recover what is said to form part of the estate of his late wife he should have taken out a certificate under section 481 of the Civil Procedure Code. But this is not an action to recover part of an estate. This is an action to recover property given by one person to another on the understanding that the property should be restored when demanded. It is an ordinary contract of bailment.

The Judgment is set aside, and the case sent back to the District Court to be heard on the merits.

It is manifest that the minor children have been improperly joined in this action. Their names should be struck out under section 18 of the Civil Procedure Code.

Appellants to have his costs of appeal.