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NOTES

COMPULSORY INTERVENTION OF THIRD PERSONS BY DEFENDANTS IN CONTRACT ACTIONS

It is a fundamental principle of pleading that the determination of the parties defendant in any action is made by the person who commences it. That is not to say, however, that only those parties the plaintiff so designates may be defendants. Nearly all the courts recognize the right of a defendant to bring in as a co-defendant a third party who is necessary to a complete determination of the controversy.¹

Likewise, most of the code states have statutory provisions which allow compulsory intervention in cases coming under a situation where, if the plaintiff prevails, the defendant will thereby acquire a right of action against a third person. The Wisconsin and New York statutes may be taken as typical.²

Cases involving promissory notes are by far the largest class in which the question of compulsory intervention is presented. In a late case decided in Oregon where an action was brought by a real estate broker against the maker of a note given for brokerage services rendered the maker, the latter was not allowed to bring in the plaintiff's partner and sureties, when defendant counterclaimed for damages on the ground of inducement by fraudulent representations to enter the agreement. The Oregon court, in support of its decision, gave the reason that the third parties would not be injured by a determination between plaintiff and defendant. In effect, it held that the third parties were not necessary, and on that ground sustained the trial court's denial of defendant's motion.³ Again, in a Colorado case, the makers of a note were not allowed to bring in the payee, in an action by the indorsee against the makers, where the cross-petition of the latter alleged fraud on the part of the payee in securing the note, but failed to allege that the defendants relied upon the fraudulent representations.⁴ Also, in *Cooper v. Gilbert*,⁵ the high court of Oklahoma reaches a result in harmony with the decision of the Colorado

¹ WIS. STAT. (1939) § 260.19 (1); *Hoyt v. Upper Marion Ditch Co.*, 94 Utah 134, 76 P. (2d) 234 (1938); *Minnesota National Bank of Duluth v. Equitable Life Assurance Society of United States*, 197 Minn. 340, 267 N.W. 202 (1936); *Schmidt v. La Salle Fire Insurance Co. of New Orleans*, 209 Wis. 576, 245 N.W. 702 (1933); *Kentucky & West Virginia Power Co. v. Crawford*, 229 Ky 254, 16 S.W. (2d) 1041 (1929).

² The principal Wisconsin statute is as follows: WIS. STAT. (1939) § 260.19 (3) —“A defendant, who if he be held liable in the action, will thereby obtain a right of action against a person not a party may apply for an order making such person a party defendant and the court may so order.” The equivalent New York statute is Section 193 (2) of the NEW YORK CIVIL PRACTICE ACT.

³ *McGilchrist v. Fiedler*, 155 Ore. 616, 65 P. (2d) 388 (1937).

⁴ *Dowdey v. Maxwell*, 73 Colo. 268, 215 Pac. 146 (1923).

⁵ 40 F. (2d) 260 (C.C.A. 10th, 1930).

court in *Dowdey v. Maxwell*,⁶ holding that in an action on a note, refusal to make a party defendant one who induced defendant to become involved in the transaction without consideration was not error. In the *Cooper* case the court said the joinder of parties severally liable on the same instrument is optional with the plaintiff, and additional parties are justified only where it clearly appears they have or claim to have some interest in the controversy, or they are essential to a complete determination of the suit. In a later case which was an action on a note for \$16,000 made by Wood & Co. payable to the order of C. Woods, and the executor of the estate of C. Wood brings the suit, this court held that where plaintiff's action is in law for money only, he may choose his defendants and can not be compelled to submit to intervention of parties on the ground that they are entitled to a part of the money so sought, if in such action the satisfaction of the judgment would operate to release defendants and the defendants may not require plaintiff to admit new parties defendant, where the defendants sued claim no equities or defenses against such new parties.⁷ But in *Johnson v. Cullinan*⁸ it was held that where the payee of a note sued the principal maker thereof, without joining the endorser, as may be done under Oklahoma statutes, there is no authority for making such indorser a party defendant, at the instance of the principal maker, under a pleading setting up matters creating equities between such principal maker and indorser which, if true, would render such indorser liable for all or any part of the note, but which constitute no defense against the plaintiff. It also appears that where a surety upon a note has the same defenses which the maker has, the surety cannot implead the maker as a co-defendant.⁹

In New York, however, the fact that the obligation of notes was assumed by third parties with the consent of plaintiffs was justification for granting defendant's motion to bring in these third parties by counterclaim.¹⁰ But in New Mexico, where the Uniform Negotiable Instruments Law makes a maker of a promissory note primarily liable, an accommodation maker is not entitled to have the party for whose benefit he signed made a party, when such third party did not sign, and the accommodation maker is being sued on the note.¹¹ However, the state of Nebraska appears to have a more equitable rule, as illustrated by the case of *Farmers & Merchants Bank of Ulysses v. Tate*,¹² where in an action by the indorsee of a promissory note against

⁶ 73 Colo. 268, 215 Pac. 146 (1923).

⁷ *Wood & Co. v. Wood*, 169 Okla. 217, 37 P. (2d) 256 (1934).

⁸ 94 Okla. 246, 221 Pac. 732 (1925).

⁹ *Prentice v. First National Bank*, 101 Okla. 232, 224 Pac. 963 (1924).

¹⁰ *Williams v. Edward De V. Tompkins, Inc.*, 211 App. Div. 17, 206 N.Y. Supp. 637 (1924).

¹¹ *First Savings Bank & Trust Co. v. Flournay*, 24 N.M. 256, 171 Pac. 793 (1918).

¹² 96 Neb. 142, 147 N.W. 213 (1914).

the maker alone, the maker by answer alleged that the transfer of the note by the payee to the indorsee was without consideration and a mere device to enable the latter to fraudulently collect the note for the benefit of the payee. But the courts of the state of North Dakota have a contrary rule as shown by the case of *Bolton v. Donovan*.¹³ Indiana has taken an extreme position on this question. Such was indicated in *Smallhouse v. Thompson*¹⁴ where in a suit by an assignee upon a promissory note against the maker, the answer of the maker that the payee had notified him that the alleged assignment to plaintiff was invalid, and that he must not pay the assignee, did not help defendant maker in his application to have the payee made a party. The court reached a technical result, denying defendant's application for the reason that it should have been made upon affidavit before answer. In a later case this court refused to allow one who agreed to become surety but who did not so become in fact, to bring in the buyer who made the note to secure the purchase of goods.¹⁵ In Indiana, apparently, the party sought to be brought in must be a party to the note, if the impleading is to be done by answer.¹⁶ An interesting case in the state of Washington was an action brought on a note which was secured by a mortgage on growing crops of wheat. A judgment was sought for the value of the wheat against *W*, to whom a negotiable warehouse receipt for the wheat had been transferred, on the ground that he had received and converted the wheat. The Supreme Court decided that the warehouseman was at least a proper party, thus overruling the trial court's denial of *W*'s motion to interplead him.¹⁷ This liberal holding is quite opposed to the strict rule of the court of New York in the case of *Levin v. Lax & Abowitz, Inc.*, where the maker of a purchase money note was not permitted to implead the payee in a suit brought by the indorsee, and the maker had alleged breach of warranty as to the efficiency of the machinery for the purchase of which the note was given.¹⁸ On an entirely different point, in the matter of contribution, the high court of California decided that the settlement of contribution between guarantors is not a sufficient question to entitle guarantors-defendant to implead co-guarantors who were not sued.¹⁹

A most interesting problem is presented by those cases which are not clearly of the type where defendant will acquire a cause of action against a third party, if the plaintiff succeeds. Thus, in New York,

¹³ 9 N.D. 575, 84 N.W. 357 (1900).

¹⁴ 17 Ind. 204 (1861).

¹⁵ *Webster v. Smith*, 4 Ind. App. 44, 30 N.E. 139 (1892).

¹⁶ *Heaton v. Lynch*, 11 Ind. App. 408, 38 N.E. 224 (1894).

¹⁷ *Arnold v. Peasley*, 128 Wash. 176, 222 Pac. 472 (1924).

¹⁸ 137 Misc. 132, 241 N.Y. Supp. 486 (1930).

¹⁹ *Merchants Trust Co. v. Bentel*, 10 Cal. App. 75, 101 Pac. 31 (1909).

a creditor's executrix commenced an action against the insurer of the debtor. The policy of life insurance carried a provision that the insurer was to pay the insured's debt to the creditor, and the remainder to go to the widow of the insured. However, upon the death of the insured his widow notified the insurance company to pay no one except herself. But the company denied all liability, whereupon the executrix of the creditor's estate commenced the action. Here the defendant insurance company moved to bring in the widow as a party defendant, and the trial court's denial of this motion was upheld. Clearly, the reason for the decision is the fact that the issue between the plaintiff and defendant could be completely determined without the presence of the third party, and defendant, by force of the express provision in the policy, would incur no liability (other than as provided in the policy) in favor of the widow, in case the plaintiff prevailed.²⁰ However, in a late Minnesota case, the refusal of the trial court to bring in as defendants creditors of insured's estate who claimed that the premium on the policy had been paid in fraud of creditors, and the action was brought by the guardian of a minor beneficiary under a life policy against the insurance company was held an abuse of discretion.²¹ A Kentucky decision states that the defendant's application after the court had announced its decision against defendant was made too late, and, consequently, the court refused to bring in the third party. In this case the defendant insurance company knew of the existence of the policy, which covered the same property, issued by the third party (insurer), at the time defendant made the settlement of loss under its policy, and had ample opportunity to bring in the third party in an action subsequently brought against defendant, notwithstanding the settlement.²² Another New York adjudication decides that a liability insurer could not be brought into an action where the policy required judgment against insured, and a money satisfaction thereof, as a condition precedent to the insurer's liability.²³ The court seems to base its decision on the ground that when the insurer merely "may" be liable was insufficient where the statute authorizes bringing in an additional party "who is or will be liable" to the defendant.

Likewise, decisions involving brokerage contracts present interesting problems. A rather late decision held that in an action for broker's commissions on a sale of defendant's property, defendant should be permitted to bring in as a party defendant the person to whom she

²⁰ *Montague v. Jewelers' Tradesmen's Co.*, 41 App. Div. 530, 58 N.Y. Supp. 715 (1899).

²¹ *Minnesota National Bank of Duluth v. Equitable Life Assurance Society of United States*, 197 Minn. 340, 267 N.W. 202 (1936).

²² *Prussian National Insurance Co. of Stettin, Germany v. Terrell*, 142 Ky. 732, 135 S.W. 416 (1911).

²³ *Kromback v. Killian*, 215 App. Div. 19, 213 N.Y. Supp. 138 (1925).

paid the money, under a mistake of fact, and against whom, in event of recovery against her, she will have an action for the money so paid.²⁴ Then, in *Van Cott v. Marion De Cries, Inc.*²⁵ the purchaser of property was held not a "person liable" for the broker's claim for commission against the vendor. Here the court said that the vendor would be liable to the purchaser in any event, and the only damages recoverable against the purchaser would be the difference between the purchase price and the value of the land sold. In the earlier case of *Lewis H. May Co. v. Mott Avenue Corp.*²⁶ it was held that a vendor of realty who was sued for commissions on a sale by a real estate broker was not entitled to bring in the purchaser, who represented that there was no broker in the transaction, as defendant. In that decision useful rules are found to guide a defendant in seeking to implead third persons. The court states that an application by defendant having a claim against the third person to have such person brought in should be granted (1) where the third person is liable to plaintiff jointly or severally with defendant, or where either he or defendant is liable for the claim sued on or (2) where, irrespective of the third person's liability to plaintiff for such claim, he is liable to indemnify defendant. A fact situation of a different character, inasmuch as the broker was sued, is found in the case of *Sullivan v. Crowe*²⁷ where the vendor sued the broker for the purchase price of a saloon, which the broker sold on an arranged commission. The defendant was not permitted to join as co-defendant the vendee who repudiated the sale and demanded return of the purchase price on account of unauthorized fraudulent representations of the broker as to the value of the business, because the right of the two parties to recover from the broker does not depend upon the same state of facts, and he may be liable to both.

Breach of warranty cases have given rise to decisions affecting the problem of joinder. In an action by a husband and wife against a retailer of a dress which was sold to the wife under a warranty of fitness, for injuries to the wife allegedly caused by the dress, the defendant retailer was not allowed to bring in as a party defendant the vendor from whom he purchased the dress.²⁸ In a case in the same state which was decided somewhat earlier it was held that where a defendant was sued for breach of warranty of a boiler, he was not entitled to bring in as defendant a third party, whom defendant allegedly would be entitled to sue for alleged negligence in the con-

²⁴ *Merritt v. Rhodes*, 232 App. Div. 422, 252 N.Y. Supp. 114 (1931).

²⁵ 37 F. (2d) 48 (C.C.A. 2d, 1930).

²⁶ 121 Misc. 398, 201 N.Y. Supp. 189 (1923).

²⁷ 72 App. Div. 5, 76 N.Y. Supp. 98 (1902).

²⁸ *Deal v. Lilyan Bertell, Inc.*, 168 Misc. 254, 5 N.Y.S. (2d) 772 (1938).

struction and installation of the boiler, since the claims were wholly unrelated.²⁹

Likewise, the problem of compulsory joinder of defendants has arisen in a considerable number of cases which might be termed ordinary contract cases, to distinguish them from the special types of breach of contract cases. In a case where a defendant filed a counterclaim in a suit for the breach of a contract made between it and the plaintiff's assignor, claiming to be entitled to certain profits made by the assignor, it was held that the defendant was not entitled to join the assignor as a party defendant.³⁰ Also, a Kentucky case states that joint owners were necessary parties to a suit brought to recover on a contract executed by one of them with a power company, granting the latter the right to construct a power line over the land, and the proper method to make them parties is by pleading. Here the suit was on the contract, but plaintiff, who executed the contract, was one of three joint tenants. The court overruled defendant's motion to make the other two joint tenants parties.³¹ In one of the few decided cases in the state of Connecticut involving the problem of compulsory joinder it was held that in an action for an auto insurance premium, an order, made when the case was nearly closed, citing in an additional party defendant, was within the court's discretion where the parties stipulated that evidence introduced theretofore might be used with the same force as if introduced thereafter. The action was brought against the party who insured the car, and the party impleaded was his daughter in whose name defendant put the car, because he wanted her to have it after his death.³² In another case it was held that in an action to recover a down payment on a land contract, on the ground of the purchaser's infancy when the contract was executed, in which vendors counterclaimed for damages for breach of contract and claimed plaintiff was a mere agent, the vendors were not entitled to have plaintiff's alleged principals brought in as defendants.³³ Nevertheless, in an action by an assignee for balance due on an account, in which action defendant sought damages by cross-complaint, the trial court refused defendant's motion to have the assignor made a party, and this ruling was upheld upon appeal.³⁴

New York decisions involving the problem of compulsory joinder of defendants in contract cases are frequent. An unusual New York

²⁹ *Feuer v. Fenton*, 162 Misc. 887, 295 N.Y. Supp. 918 (1937).

³⁰ *William P. McGarry Co. v. Andrew Weston Co. Inc.*, 286 N.Y. Supp. 2 (N.Y. 1936).

³¹ *Kentucky & West Virginia Power Co. v. Crawford*, 229 Ky. 254, 16 S.W. (2d) 1041 (1929).

³² *Martin J. McEvoy, Inc. v. Iannantuoni*, 104 Conn. 372, 132 Atl. 895 (1926).

³³ *Zauderer v. Market St. Long Beach Realty Corp.*, 128 Misc. 364, 218 N.Y. Supp. 669 (1926).

³⁴ *McElroy v. Andrews*, 178 Wash. 1, 33 P. (2d) 379 (1934).

case, decided in 1932, held that a corporation sued for attorney's fees, cannot interplead another attorney employed for the same purpose.³⁵ Another decision held that a warehouseman was not entitled to bring in the original bailor as defendant. There the suit was on a warehouse receipt, indorsed in blank, and received as security for payment of notes, for failure to deliver the quantity of coffee covered by the receipt, on demand. The warehouseman's answer alleged that he had delivered the coffee to the original bailor on her representation that she still owned the receipt, without showing anything connecting plaintiff with such delivery.³⁶ In an action by a purchaser's assignee to recover a down payment on the purchase price of realty and expenditures in examining title, on the ground that the vendor's title was unmarketable, the vendor was allowed to bring in as a defendant the vendee named in the contract, and by counterclaim to seek specific performance against such vendee.³⁷ Again, in an action in contract the defendant could join additional parties alleged to have conspired against her, where defendant counterclaimed for damages alleging fraud and duress in obtaining her signature, and asking for cancellation of the contract.³⁸ Also, in an action for delay in forwarding goods shipped, a notice of claim served by defendant on a railroad company was held to state a cause of action for unreasonable delay, entitling defendant to have the railroad brought in as a defendant.³⁹ In another case involving the forwarding of goods, where affidavits supporting a shipper's motion to bring in a forwarding company as a defendant, in an action by the Director General of Railroads for freight, on the ground that the shipper might have a cause of action over against the forwarding company for not disclosing that it was an alien enemy, resulting in stopping of shipment, was held insufficient in the absence of an allegation tending to show any wrong by the forwarding company.⁴⁰ A case decided in 1923 held that in an action by a buyer against a seller for damages caused by impurities in beer coloring sold, the seller was not entitled to have the party who sold to him brought in as a defendant.⁴¹ But, where the original defendant claimed that in contracting for lighterage service from plaintiff it acted as agent for a third party, which was bound to reimburse it for liability assumed, it

³⁵ *Strauss v. Grande Maison De Blanc Inc.*, 237 App. Div. 83, 260 N.Y. Supp. 368 (1932).

³⁶ *Williams v. Flagg Storage Warehouse Co.*, 128 Misc. 566, 220 N.Y. Supp. 124 (1927).

³⁷ *Nasha Holding Corp. v. Ridge Bldg. Corp.*, 221 App. Div. 238, 223 N.Y. Supp. 223 (1927).

³⁸ *Galloway v. Wolfe*, 232 App. Div. 163, 249 N.Y. Supp. 608 (1931).

³⁹ *Wichert, Inc. v. Gallagher & Ascher*, 206 App. Div. 756, 201 N.Y. Supp. 186 (1923).

⁴⁰ *Hines v. National Gum & Mica Co.*, 124 Misc. 511, 208 N.Y. Supp. 460 (1925).

⁴¹ *Neuss, Hesslein & Co., Inc. v. National Aniline & Chemical Co., Inc.*, 120 Misc. 164, 197 N.Y. Supp. 808 (1923).

was within the court's discretion to order such third party to be impleaded as a defendant.⁴²

In a Kansas case it was held that a motion to bring in as defendant another obligor on the bond is addressed to the trial court's discretion, and the denial of such motion is not prejudicial error. The court stated that the party for whose benefit a redelivery bond is given in a replevin action may sue either or all of the obligors on the bond; in the instant case only one of the obligors was sued.⁴³ Nevertheless, the high court of the state of Utah decided that it was error for the trial court to order a third party in as defendant, on request of defendant in his answer, but without any allegations justifying it, where the defendant agreed to construct a canal for an irrigation company, and the work was to be performed under the supervision of the company's engineer, whose measurements and determination of the amount of work were to be final. The defendant subcontracted to the plaintiff, who performed the work and received pay according to the engineer's measurements, and then sued defendant for a balance allegedly due, claiming that the measurements were incorrect.⁴⁴ But the court in a Minnesota decision, where the action was to recover damages for breach of a contract by which the defendant agreed to furnish materials of a stipulated quality, to be used in the construction of a house by the plaintiff for a family residence on lots owned by his wife, held that the defendant was entitled to set up as a counterclaim an unpaid balance of the contract price for the material, and, in case he established his counterclaim, to enforce his lien therefor in the action, and to that end, to have the plaintiff's wife made a party thereto.⁴⁵ However, in North Carolina, deceased's executor sued a tenant, for rent of estate property, in justice of the peace court and recovered. On appeal to Superior Court defendant (tenant) took a nonsuit, and further appealed to the Supreme Court. In Superior Court, after hearing the case, one *B* was made a party on motion of defendant West, who was a devisee of deceased. The Supreme Court said it was error to grant the nonsuit, and to make *B* a party after the nonsuit, and further said that the bringing in of *B* changed the nature of the action from one for rent by a landlord to one concerning the right to land and the rents from it, assigning the latter as another reason for the holding.⁴⁶ On the other hand, in an action by a landlord against a third party, to whom a tenant had sold grain, to recover the proceeds of the sale or the value of the grain, on the ground that plaintiff had a landlord's lien thereon, in which the land-

⁴² *Federal Lighterage Co., Inc. v. Italia-America Shipping Co.*, 125 Misc. 181, 210 N.Y. Supp. 458 (1925).

⁴³ *Citizens Insurance Co. of Missouri v. Etchen*, 111 Kan. 545, 207 Pac. 782 (1922).

⁴⁴ *Annett v. Garland*, 8 Utah 150, 30 Pac. 365 (1892).

⁴⁵ *Crosby v. Scott-Graff Lumber Co.*, 93 Minn. 475, 101 N.W. 610 (1904).

⁴⁶ *Shell v. West*, 130 N.C. 171, 41 S.E. 65 (1902).

lord denied waiving the lien, the tenant's assignee of the proceeds of sale was properly impleaded since the real issue was whether the landlord's lien had been waived. In this case the tenant assigned the proceeds of the sale before collection, and the assignee commenced an action against the third party vendee of the tenant upon a check given by the third party, but upon which he had stopped payment after discovery that the landlord claimed a lien on the grain.⁴⁷ In a Minnesota case a statement was made that persons executing a note and mortgage and redeeding the land to the owner as accommodation were not entitled, in a suit on the note, to have the owner brought in as a party. The fact situation is peculiar. On June 11, 1923, defendants Cashman executed their note for \$1400 at 5% to plaintiff. In an action on this note the defendants moved to have the Bank of Correll made a party, and the motion was granted, but reversed on appeal. The Correll bank was the owner of the land at the time the note was given, and had owned it for several years. The plaintiff had a mortgage which came due June 11, 1923, but the bank was in no way liable on the mortgage debt. Negotiations between plaintiff and the bank for the purpose of continuing the mortgage so as to protect the equity of the bank in the land were had. Thereafter the bank deeded to the Cashmans, without consideration, and then they gave the note and mortgage sued on and redeeded to the plaintiff. The court states that all that the Cashmans did was done as an accommodation to the bank. The mortgage had not been foreclosed or paid.⁴⁸ Again, in an ejectment action plaintiff's grantor could not be brought in as a party defendant and subjected to an action for damages arising from the ejectment if plaintiff prevailed, where it was not shown that the plaintiff would be liable over to the defendants either on recovery of the property or for damages for wrongful detention thereof, although plaintiff's grantor was estopped from claiming any title to the disputed land, because he pointed out the boundary to defendants and erected improvements on the disputed land.⁴⁹ However, a third party who had made an indemnity agreement in favor of defendant landlord could be impleaded by defendant in an action against the landlord by a tenant for a sum deposited as security on the lease which had been assigned to the plaintiff.⁵⁰ But, in an action not affecting real property, the court states that where a third person gave defendant an order for printing, and defendant gave the identical order to plaintiff's assignor, the defendant when sued for the work and defending on the ground that

⁴⁷ *Wallace v. Farmers Exchange Co.*, 197 Iowa 568, 197 N.W. 654 (1924).

⁴⁸ *Aetna Life Insurance Co. v. Cashman*, 181 Minn. 82, 231 N.W. 403 (1930).

⁴⁹ *Gilbert v. Mehrtens*, 159 Misc. 702, 287 N.Y. Supp. 657 (1936).

⁵⁰ *125 West 45th Street Restaurant Corp. v. Framax Realty Corp.*, 249 App. Div. 589, 293 N.Y. Supp. 216 (1937).

it was badly done, was entitled to have such third person brought in. But in the same case the defendant did not have the right to implead the plaintiff's assignor as a defendant, in order to litigate a counterclaim against the assignor which was in excess of the amount demanded in the complaint.⁵¹

However, in *Spruill v. Bank of Plymouth*, an action was begun by a depositor against the bank, to recover the amount of a check honored by the bank after receipt of the depositor's notice to stop payment. It was held that the payee of a check is not a necessary party so long as the plaintiff claims no relief against him. But here the issue was as to notice, and the bank claimed it was not notified and therefore that its payment of the check was proper. The court, however, ruled that if the payee of the check be considered a proper party the dismissal of the action as to the payee was not reviewable, since such dismissal was not an abuse of discretion on the part of the trial court.⁵² In a suit by a lessor of oil and gas land for royalties due under the lease, which are also claimed by the lessor of adjacent lands, the latter must be made a party on the request of the lessee, so that he may be concluded by the judgment rendered.⁵³ One of the few cases arising in the state of Washington on the subject of compulsory intervention held that since a *bona fide* holder of a trade acceptance could have recovered from the maker regardless of the defenses against the assignor, and the action of one not a *bona fide* holder could be defeated by the maker interposing his defenses, and a complete determination could therefore be had without the presence of other parties, the assignor of the trade acceptance was not a necessary party.⁵⁴

From a study of these cases presenting the problem of compulsory intervention of third parties, on motion of the defendant, it may be concluded that the minimum requirement is that the third party have some interest in the controversy. The normal situation is where the third party will become liable to defendant, if plaintiff succeeds. Usually, where the third party is necessary to a complete determination of the controversy, the defendant may implead him as a matter of statutory right. However, in every case, great latitude is accorded the judgment of the trial court, and the appellate jurisdiction is loath to overrule its decision, in the absence of a clear abuse of discretion.

GEORGE R. FALLER.

⁵¹ *Hughes v. Charles Schweinler Press*, 161 Misc. 713, 293 N.Y. Supp. 259 (1936).

⁵² 163 N.C. 43, 79 S.E. 262 (1913).

⁵³ *Central Kentucky Natural Gas Co. v. Stevens*, 134 Ky. 306, 120 S.W. 282 (1909).

⁵⁴ *Ladd & Tilton Bank v. Rosenstein*, 122 Wash. 301, 210 Pac. 677 (1922).