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# CIVIL PROCEDURE-PARTIES-INTERVENTION DENIED WHERE APPLICANT ASSERTS AN INDEPENDENT CAUSE OF ACTION IN DAMAGE SUIT

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# RECENT DECISIONS

CIVIL PROCEDURE—PARTIES—INTERVENTION DENIED WHERE APPLICANT ASSERTS AN INDEPENDENT CAUSE OF ACTION IN DAMAGE SUIT—In plaintiff's action for property damages sustained in a collision with defendant's automobile, defendant's wife filed a petition of intervention for her claim against plaintiff for personal injuries received in the accident. Plaintiff's motion to strike the petition of intervention was overruled by the trial court. On appeal, *held*, reversed. Petitioner's cause of action was independent of the controversy between plaintiff and defendant and did not fall within the provisions of the court rule allowing intervention.[1] *Edgington v. Nichols*, (Iowa 1951) 49 N.W. (2d) 555.

It is commonly said that the right of a third party to intervene by his own motion in a pending action was unknown at common law and is entirely statutory in character.[2] Therefore whether intervention will be permitted in a particular case is dependent upon a construction of the applicable statute or court rule. The wording of these provisions varies considerably among the states but they may be grouped into two general categories.[3] The first of these is the broad type statute which makes an "interest in the matter in litigation" the test for the right to intervene. The second has a more restrictive provision limiting intervention to actions for the recovery of real and personal property.[4] The Iowa rule is of the first type. A large number of decisions appear to adopt a somewhat restrictive interpretation of this statutory language. In general, these courts have said that the interest in the litigation which will authorize intervention must be of such a direct and immediate character that the person seeking to intervene will either gain or lose by the direct legal operation and effect of the judgment.[5] Moreover, a number of cases have also said that the petitioner may not introduce a new and independent cause of action into the

[1] Iowa Rules of Civil Procedure, effective July 4, 1943. See 58 Iowa Code Ann. 34. Rule 75 states, "Any person interested in the subject matter of the litigation, or the success of either party to the action, or against both parties, may intervene at any time before trial begins, by joining with plaintiff or defendant or claiming adversely to both."

[2] Principal case at 556; Massachusetts Bonding & Insurance Co. v. Novotny, 200 Iowa 227, 202 N.W. 588 (1925). See also 67 C.J.S., Parties §53 (1950); 39 Am. Jur., Parties §55 (1942).

[3] For various statutory provisions see 67 C.J.S., Parties §53 (1950).

[4] CLARK, CODE PLEADING, 2d ed., 420 (1947).

[5] Usually the problem arises in cases in which the petitioner seeks to intervene in actions involving claims to real or personal property. See Cornhusker Electric Co. v. City of Fairbury, 131 Neb. 888, 270 N.W. 482 (1936); Commercial Block Realty Co. v. United States Fidelity & Guaranty Co., 83 Utah 414, 28 P. (2d) 1081 (1934); Jersey Maid Milk Products Co. v. Brock, 13 Cal. (2d) 661, 91 P. (2d) 599 (1939). Such a restrictive interpretation of this broad statutory language may be partially explained by the historical development of intervention procedures. The right to intervene first received recognition in in rem proceedings where the judgment would be binding upon all the world. For a good discussion of the sources of modern intervention practice see 2 MOORE, FEDERAL PRACTICE 2310 (1938).

initial controversy.[6] The decision of the Iowa court in the principal case appears to be in accord with this line of authority. Yet the statutory language here involved seems clearly susceptible to a broader interpretation. Some courts have shown a more liberal tendency in this respect. Thus where an employer sued a bonding company on a defalcation under an employer's fidelity bond, the Alabama court allowed intervention by the employee who had a separate agreement of indemnification with the defendant.[7] The court said the statute was intended to expedite and economize litigation by permitting parties interested in the subject matter of the action to adjust the matter in one rather than several suits.[8] Another example of the tendency toward broader interpretation of intervention statutes is the case of *Dodd v. Reese*[9] in which the Indiana court construed a statute of the narrow type (expressly limiting intervention to actions for recovery of real or personal property) to allow intervention by an attorney in an action to set aside a decree of adoption on the ground that it was procured by fraud. The court held that the interest of the lawyer in his reputation was such as to permit him to enter the action, and that despite the language of the statute, the right to intervene is not limited to actions for the recovery of real or personal property.[10] The problem of the principal case appears to be a novel one.[11] If it is approached with a consideration of the Alabama court's statement that a basic purpose of intervention procedure is the prevention of unnecessary litigation, one may well dispute the decision of the Iowa court. It is clear that the claims of both the plaintiff and the intervenor arise out of the same transaction and involve common questions of law and

[6] Cooper v. Erickson, 213 Iowa 448, 239 N.W. 87 (1931); Steltzer v. Compton, 164 Iowa 465, 145 N.W. 896 (1914) cited in the principal case at 557. See also cases cited in 67 C.J.S., Parties §58 (1950).

[7] Franklin v. Dorsey-Jackson Chevrolet Co., 246 Ala. 245, 20 S. (2d) 220 (1944). See annotation in 157 A.L.R. 159 (1945).

[8] Franklin v. Dorsey-Jackson Chevrolet Co., supra note 7 at 248. See also cases cited in 67 C.J.S., Parties §53 (1950). The Iowa court has also shown this tendency in some decisions. In Reard v. Freiden, 184 Iowa 823, 169 N.W. 245 (1918), the court permitted the intervention of general creditors of an insolvent bank into an action to cancel notes given to the bank on the theory that the amount which would be received by the creditors on their claims against the bank would be so affected by the outcome of this suit that they have a "direct interest" in the litigation.

[9] 216 Ind. 449, 24 N.E. (2d) 995 (1940).

[10] Id. at 456. This case is noted in 16 IND. L.J. 110 (1940). For annotation of cases on such intervention by an attorney see 128 A.L.R. 574 (1940).

[11] The writer has not seen any other cases dealing with the particular issue raised by the principal case, i.e., intervention by a person injured in a car collision into an action by one owner against the other for property damages. Professor Moore states, "A composite case picture illustrates the general trend as to what parties and interests will support intervention. It has been allowed to an owner or lienholder of property subject to court control; a claimant to a fund or property in the possession of the court for purposes of administration or distribution; a person inadequately represented by a party before the court who purports to represent him; a person in privity with a party, as a purchaser of an interest in property pendente lite; one who may be bound to satisfy a judgment, as a principal or surety; the attorney general in a suit involving a charitable trust; a co-respondent or an officer representing the state in a divorce case; a subrogee." 2 MOORE, FEDERAL PRACTICE 2320 (1938).

fact.[12] Indeed the court recognized that if the petitioner's claim had been assigned to the defendant prior to litigation, it would have constituted a required counterclaim.[13] Also, it is difficult to see wherein the plaintiff will be prejudiced by the introduction of this related claim. The only issues foreign to the initial action are those relating to the damages suffered by the petitioner. The admission of such proof would not ordinarily cause any material disruption of the proceedings. On the other hand there are substantial interests of public policy supporting the integration of these two causes of action. The prevention of unnecessary litigation and a multiplicity of suits is recognized throughout our present day procedural law as a necessity to prevent the overburdening of the judicial system. It seems unfortunate that the Iowa court refused to take advantage of the broad language of its court rule, which could have been readily applied toward the accomplishment of this result.

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[12] This case would seem to fall clearly within the permissive intervention provisions of the Federal Rules. See Rule 24(b) Federal Rules of Civil Procedure, 28 U.S.C.A. 129 as amended 1946, effective March 19, 1948.

[13] Principal case at 558.