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FEDERAL PRACTICE - APPEAL AND ERROR - SINGLE APPEAL FROM STATE COURT INVOLVING CONSOLIDATED SUITS

FEDERAL PRACTICE — APPEAL AND ERROR — SINGLE APPEAL FROM STATE COURT INVOLVING CONSOLIDATED SUITS — Three national banks brought separate suits in a state court against the same defendants to annul a

tax assessment, claiming that the act authorizing such assessment violated a federal statute. The suits were consolidated for the trial of this main issue but a separate judgment was rendered in favor of each bank. The defendants took three separate appeals to the state supreme court, but only one transcript was sent up and the appeals were docketed and argued as one case. In a single opinion the court annulled the judgments appealed from. The plaintiffs took a single appeal to the Supreme Court of the United States, and the defendants moved to dismiss it on the ground that several judgments cannot be reviewed by a single appeal. The Court *held* that since a complete consolidation of the cases had been effected the motion should be denied. *First National Bank v. Louisiana Tax Commission*, 289 U. S. 60, 53 Sup. Ct. 511.

There are two kinds of consolidation: (1) true consolidation, and (2) consolidation for convenience of trial.[1] When cases are truly consolidated there is a complete merger of all into one so that there is only one judgment, and a single appeal is proper.[2] When cases are consolidated for convenience of trial they retain their separate characters throughout, and separate judgments are rendered in each case;[3] the practice of taking a single appeal has been condemned by the federal courts,[4] since the one appeal is from several judgments.[5] In Louisiana, however, a single appeal is allowed.[6] In the principal case it is clear that the consolidation in the trial court was only for convenience of trial, but the United States Supreme Court seems to hold that there was true consolidation in the Louisiana Supreme Court. Thus, although the judgment in that court necessarily had the effect of three judgments it was, nevertheless, only one judgment. If the procedure in the Louisiana Supreme Court had been interpreted as amounting to nothing more than consolidation for convenience of hearing in that court, such interpretation would have forced the United States Supreme Court either to forsake the rule of the federal courts against reviewing several judgments in one appeal, or else to grant the motion to dismiss this joint appeal, and require separate appeals in a case where there was no substantial reason for requiring more than one. By the present decision the Supreme Court has avoided these difficulties but, in so doing, has created another. If this type of consolidation in an intermediate appellate court is true consolidation, plaintiffs who bring separate suits in a trial court must all join in an appeal from that court. Only by summons and severance can one plaintiff take an appeal if the others refuse to join.[7] Perhaps, however, the course taken by the Supreme Court involves the less serious difficulty.

B. A. L.

[1] Lumiansky v. Tessier, 213 Mass. 182, 99 N. E. 1051 (1912).

[2] Allen v. McRae, 122 Wis. 246, 100 N. W. 12 (1904); Baltimore & O. S. W. R. R. v. United States, 220 U. S. 94, 31 Sup. Ct. 368, 55 L. ed. 384 (1911); Lee v. Township of Kearny, 42 N. J. Law 543 (1880).

[3] Keep v. Indianapolis & St. Louis R. R., (C. C. E. D. Mo. 1882) 10 Fed. 454.

[4] Louisville & N. R. R. v. Summers, (C. C. A. 6th, 1903) 125 Fed. 719; Waters-Pierce Oil Co. v. Van Elderen, (C. C. A. 8th, 1905) 137 Fed. 557; Mutual Life Ins. Co. v. Hillmon, 145 U. S. 285, 12 Sup. Ct. 909, 36 L. ed. 706 (1892).

[5] Brown v. Spofford, 95 U. S. 474, 24 L. ed. 508 (1877).

[6] Succession of Clark, 30 La. Ann. 801 (1878); Succession of Weinke, 118 La. 206, 42 So. 776 (1907).

[7] Todd v. Daniel, 16 Pet. 521, 10 L. ed. 1054 (1842); Hartford Accident & Indemnity Co. v. Bunn, 285 U. S. 169, 52 Sup. Ct. 354, 76 L. ed. 685 (1932); and cases cited in note to this case in 31 MICH. L. REV. 578 (1933).